

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Connect America Fund Phase II Auction)	AU Docket No. 17-182
)	
ETC Annual Report and Certifications)	WC Docket No. 14-58

**OPPOSITION OF CONEXON, LLC TO WISPER ISP, INC.
PETITION FOR WAIVER OF DEADLINE FOR ETC DESIGNATION**

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SUMMARY

Conexon, LLC, opposes Wisper ISP, Inc.'s Petition for Waiver of the February 25, 2019, deadline for Wisper to obtain ETC designation in Oklahoma in order to become eligible to receive CAF-II support in Oklahoma. Wisper has not demonstrated good cause for a waiver because it has failed to produce any credible evidence that it acted in good faith to take the steps necessary to obtain ETC designation from the Oklahoma Corporation Commission ("OCC") before the FCC deadline. Contrary to Wisper's claims, relevant precedent supports a denial of its waiver petition, while the case relied upon by Wisper in support of its Petition for Waiver is clearly distinguishable.

The FCC has provided that CAF-II auction winners will be presumed to be acting in good faith in seeking ETC designations if they have filed applications for such designations no later than September 27, 2018. Wisper missed that deadline by 81 days, filing its ETC application with the OCC on December 17, 2018 (and 111 days after the FCC issued a public notice announcing that Wisper was a CAF-II auction winner).

Worse, Wisper missed the deadline deliberately. Wisper admitted, in response to a data request in its Oklahoma ETC proceeding, that it made a "strategic determination" to delay submitting its ETC application. In addition, the ETC application, when it was finally filed by Wisper, misrepresented Wisper's CAF-II performance obligations, significantly understating the broadband speeds Wisper is required to deliver in Oklahoma.

After being rebuked by an OCC administrative law judge for failing to take reasonable steps to facilitate completion of the review and hearing process, Wisper, in its Petition for Waiver, seeks to pin the blame on Conexon for Wisper's failure to meet the Commission's ETC

designation deadline. This effort to make Conexon the culprit fails, however, because Wisper's allegations have no factual basis.

Conexon also urges the Commission to declare that Wisper is in default of its CAF-II compliance obligations in Kansas because the ETC designation issued to Wisper by the Kansas Corporation Commission was premised on Wisper's erroneous understatement of the broadband speeds it must provide in Kansas to meet the FCC's CAF-II performance requirements. Although Wisper should have realized that it had misstated its performance obligations, it made no effort to correct the record in Kansas.

Finally, problems associated with Wisper's ETC designations are not limited to Oklahoma and Kansas. Specifically, Conexon has filed an appeal in the Missouri Court of Appeals challenging the Missouri Public Service Commission's grant of ETC designation status to Wisper on various procedural and substantive grounds.

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Conexon, LLC (“Conexon”), a Missouri Limited Liability Company engaged in the planning, design and construction of fiber optic networks and a participant in the Commission’s recent Connect America Fund Phase II (“CAF-II”) auction through the Rural Electric Cooperative Consortium, was recently provided a copy of Wisper ISP, Inc.’s (“Wisper” or the “Company”) Petition for Waiver of Deadline for ETC Designation filed with the Commission (“Petition for Waiver” or “Petition”), through discovery in Wisper’s Eligible Telecommunications Carrier (“ETC”) application proceeding pending at the Oklahoma Corporation Commission (“OCC”).¹ Conexon filed a Motion to Intervene in the OCC proceeding which was granted.²

¹ On May 24, 2019, in OCC Cause No. PUD 201800154, Conexon was provided copies of Wisper’s Petition for Waiver of Deadline for ETC Designation and Wisper’s Supplement to Petition for Waiver of Deadline for ETC Designation by Wisper’s counsel in response to Conexon Data Request No. 3-23.

² See Order Granting Motion to Intervene, OCC Cause No. PUD 201800154, Order No. 694275 (dated Apr. 9, 2019).

Conexon files this Opposition to respond to multiple false and/or misleading statements made by Wisper in its Petition for Waiver, as well as about Conexon, to apprise the Commission of numerous substantive and procedural deficiencies committed by Wisper that have plagued its efforts to obtain ETC designation in Oklahoma, and to urge the Commission to deny the Petition for Waiver.

I. INTRODUCTION AND BACKGROUND.

On December 17, 2018, Wisper initially filed its ETC application with the OCC, seeking ETC designation status in the areas of Oklahoma where Wisper was identified by the Commission as a CAF-II winning bidder.³ The Commission required CAF-II winning bidders to submit proof of their ETC designation as part of the CAF-II long-form application process. According to the Commission, such proof was required to be submitted within 180 days of the FCC Public Notice announcing an entity as a CAF-II winning bidder.⁴ Failure to obtain ETC designation status and submit the required documentation by the deadline is, according to the Commission, an event of default.⁵

³ See Wisper ISP, Inc. Application for Designation as an Eligible Telecommunications Carrier for Purposes of Receiving Federal Universal Service Support from the FCC Connect America Fund – Phase II, OCC Cause No. PUD 201800154 (filed Dec. 17, 2018) (“*Wisper Initial ETC Application*”) at 1 (Attachment A) (first page only). In Wisper’s Petition for Waiver, Wisper incorrectly indicates that Wisper filed its Oklahoma ETC application on Dec. 7, 2018. See Wisper ISP, Inc., Petition for Waiver of Deadline for ETC Designation (filed Feb. 25, 2019).

⁴ See *Connect America Fund; ETC Annual Reports and Certifications; Rural Broadband Experiments*, 31 FCC Rcd 5949, 6002, ¶ 149 (2016) (“*CAF-II Report and Order and FNPRM*”) (“[W]e will require winning bidders for the Phase II competitive bidding process to submit proof of their ETC designation as part of the long-form application process. Such proof must be submitted within 180 days of the public notice announcing them as winning bidders. Failure to obtain ETC status and submit the required documentation by the deadline is an event of default.”). Therefore, because the FCC announced Wisper as a CAF-II winning bidder on September 27, 2018, therefore the 180-day deadline by which Wisper was obligated to obtain ETC designation throughout its CAF-II winning areas was February 25, 2019.

⁵ *Id.*

The Commission also recognized the opportunity for parties to file a petition for waiver of the FCC's requirement that CAF-II winning bidders obtain ETC designation status by the prescribed deadline.⁶ In that regard, the Commission stated:

In the event the bidder is unable to obtain the necessary ETC designations within 180 days, we find that it would be appropriate to waive the 180-day timeframe if the bidder is able to demonstrate that it has engaged in good faith efforts to obtain an ETC designation, but the proceeding is not yet complete. A waiver of the 180-day deadline would be appropriate if, for example, an entity has an ETC application pending with a state and the state's next scheduled meeting at which it would consider the ETC application will occur after the 180-day window. This is consistent with the general approach we took in the rural broadband experiments.

We decline to adopt a hard rule requiring a winning bidder to file an ETC application within a specified amount of time to be considered acting in good faith, because, as we found in the rural broadband experiments, there were various circumstances impacting the ability of individual bidders to file their ETC applications. We expect that winning bidders will have an incentive to file their ETC applications expeditiously so that they can meet the requirements to begin receiving support as soon as possible. Instead, based on what we observed in the rural broadband experiments, when considering waivers of the 180-day timeframe for obtaining ETC designation, we will presume that an entity will have acted in good faith if the entity files its ETC application within 30 days of the release of the public notice announcing that it is a winning bidder.⁷

Wisper's Oklahoma ETC application was filed **111 days** after Wisper appeared on an August 28, 2018 Public Notice released by the Commission announcing that Wisper was a CAF-II winning bidder in Oklahoma and five other states,⁸ and **81 days** after the September 27, 2018

⁶ See *id.*, ¶ 151, n. 312 ("By providing a waiver opportunity for entities that are acting in good faith to seek an ETC designation in states that need more time, the Commission will account for the states that have procedural requirements or resource issues that make it difficult to issue a designation within 180 days.").

⁷ See *id.*, ¶¶ 152-153.

⁸ See *Connect America Fund Phase II Auction (Auction 903) Closes; Winning Bidders Announced; FCC Form 683 Due October 15, 2018*, 33 FCC Rcd 8257, Attach. A (2018).

deadline⁹ by which the Commission stated that it would consider an ETC applicant to have pursued ETC designation in “good faith.”¹⁰

II. ARGUMENT.

A. Wisper’s Lack of Due Diligence and Good Faith Compels Denial of Its Petition for Waiver.

The lack of diligence by Wisper in obtaining ETC designation in Oklahoma (and in five other states) is similar to the lack of diligence taken by the Electric Power Board of Chattanooga (“EPB”) in pursuing ETC designation after having been selected to receive Rural Broadband Experiment (“RBE”) support. In that case, ninety (90) days after being provisionally selected to receive RBE support, EPB still had not filed its ETC application with the Tennessee Regulatory Authority (“TRA”), but stated in its Petition for Waiver filed with the FCC that it expected to file its ETC application within two weeks – which would have been 103 days after EPB was included on an RBE “Ready to be Authorized” Public Notice.¹¹

By way of comparison, assuming EBP filed its ETC application with the TRA by the date indicated in its Petition for Waiver (*i.e.*, by June 15, 2015), it took Wisper even longer to file its CAF-II-related ETC application with the OCC. As a result, it is difficult to imagine how the

⁹ See 47 C.F.R. § 54.315(b)(5) (“No later than 180 days after the public notice identifying it as a winning bidder, the applicant shall certify that it is an eligible telecommunications carrier in any area for which it seeks support and submit the relevant documentation supporting that certification.”).

¹⁰ *CAF-II Report and Order and FNPRM*, ¶ 152.

¹¹ See Electric Power Board of Chattanooga Petition for Limited Waiver of Deadline to Submit ETC Designation Documentation for Rural Broadband Experiments, WC Docket No. 14-259, at 2-3 (filed June 2, 2015); *see also In the Matter of Connect America Fund; Rural Broadband Experiments*, 31 FCC Rcd 853 (WCB 2015) (“*EPB Denial Order*”) (Wireline Competition Bureau Order denying EPB’s Petition for Waiver of the Deadline for Obtaining ETC designation as a Rural Broadband Experiments winning bidder).

Commission could conclude that Wisper acted in good faith by deliberately waiting until December 17, 2018 to file its ETC application with the OCC.¹² The Wireline Competition Bureau denied EPB's petition for waiver, finding that, "[w]ith no evidence of extraordinary circumstances or good faith efforts before us, the Bureau concludes that waiver is not warranted in this case."¹³ As Conexon demonstrates in this Opposition, the facts of this case compel the same result.

1. Wisper Pursued a Strategy of Delay and It Misrepresented Its CAF-II Performance Obligations in Seeking an ETC Designation in Oklahoma.

In discovery in the Oklahoma proceeding, Wisper revealed that its decision to delay filing its ETC application was deliberate, admitting that "Wisper's counsel made the strategic determination to wait until December 17, 2018, to file the application."¹⁴ Conexon sought further information regarding the Company's self-described "strategic determination" to wait until December 17, 2018, to file its ETC application with OCC in discovery, but the Company objected to responding on the basis of attorney-client privilege.

On February 19, 2019, Conexon timely filed a Motion to Intervene in the Wisper ETC application proceeding which was granted by the OCC Administrative Law Judge ("ALJ").¹⁵ In its

¹² In fact, Wisper did not file its initial ETC application with any state commission until December 3, 2018, an ETC application filed with the Illinois Corporation Commission (Docket No. 18-1771), and Wisper filed its last of six (6) ETC designation applications with the Missouri Public Service Commission on December 21, 2018 (Docket No. CA-2019-0196). Because of factual inaccuracies about Wisper's CAF-II performance obligations, as well as other errors of Wisper's own making, Wisper also filed multiple amended ETC applications with several state commissions.

¹³ *EPB Denial Order*, 31 FCC Rcd at 854, ¶ 5.

¹⁴ See Cause No. PUD 201800154, Responses and Objections of Wisper ISP, Inc. to Conexon, LLC's Data Request No. 2, Wisper Response to Data Request No. 2-10 (see Attachment B) (excerpt).

¹⁵ Conexon Motion to Intervene, Cause No. PUD 201800154 (filed Feb. 19, 2019); see also Order Granting Motion to Intervene, Cause No. PUD 201800154, Order No. 694275 (dated Apr. 9, 2019).

Motion to Intervene, Conexon noted, among other things, that Wisper's ETC application misrepresented Wisper's CAF-II broadband performance obligations in Oklahoma. Wisper stated that it was obligated to provide 100/20 Mbps broadband speeds throughout its CAF-II winning areas in Oklahoma, not 25/3 Mbps broadband speeds, as indicated in the Company's initial ETC application filed with the OCC.¹⁶

On February 27, 2019, one day prior to the hearing on Conexon's Motion to Intervene, Wisper filed an Amended Application for Designation as an Eligible Telecommunications Carrier.¹⁷ One of the self-described purposes of Wisper's Amended ETC Application was to "...clarify the service levels to be provided in the CAF II award areas."¹⁸ Wisper acknowledges in its Petition for Waiver that Conexon's intervention forced the Company to file an amended application with the OCC to address issues raised by Conexon.¹⁹ Wisper's Amended ETC Application, however, serves to underscore the fact that Wisper, in its initial ETC application filed with the OCC, inexplicably and significantly misrepresented the nature and extent of a critical performance requirement it is obligated to meet as a CAF-II auction winner.

¹⁶ See *Wisper Initial ETC Application*, at 13 ("In the CAF Phase II auction, the FCC permitted bidders to select from among four performance tiers (for speed and data usage) and two latency tiers. For its Oklahoma Census Blocks, Wisper committed to offer 25 Mbps download and 3 Mbps upload.").

¹⁷ See Amended Application of Wisper ISP, Inc. for Designation as an Eligible Telecommunications Carrier (Public Version), Docket No. PUD 201800154 (filed Feb. 27, 2019) ("*Wisper Amended ETC Application*").

¹⁸ See *id.* at 1; see also accompanying Affidavit of Mark Albertyn, Chief Financial Officer, Wisper (stating and certifying for the first time in Wisper's ETC application proceeding that the Company will offer 100/20 Mbps broadband service throughout its CAF-II winning area in Oklahoma) (dated Feb. 27, 2019).

¹⁹ Wisper Petition for Waiver at 3.

2. Wisper's Dilatory Tactics Prompted a Rebuke from the Administrative Law Judge in Wisper's Oklahoma ETC Proceeding.

On February 28, 2019, the hearing on Conexon's Motion to Intervene was held. The ALJ recommended that Conexon's intervention be granted. During the hearing, the ALJ made the following comments regarding Wisper's prosecution of its ETC application:

ALJ: Okay. And this is the first hearing in this cause, I believe, and I would just caution, or ask that all parties make sure that you're reading the rules of the Commission, the rules of practice, and the rules that are applicable to this cause.

I mean, I reviewed the application and there's – I mean, there's no bar number, no contact information of Counsel. There's apparently a request that an order issue no later than February 20th, but no notice of hearing, no hearing was scheduled.

This cause was filed December 17th. Seems like plenty of time to have a hearing, but no hearing that has been scheduled or noticed, so I think that if Counsel had been on top of this case and read the rules, we probably wouldn't be here today.

We would have been to final order in this case, or at least been farther along in this case than we are right now. We do not like to have cases start off like this, where, you know, it just sits there for several months.²⁰

To summarize, Wisper initially made the self-described "strategic determination" to delay filing its ETC application in Oklahoma until December 17, 2018, then elected not to zealously prosecute its ETC application pending before the OCC, as evidenced by the comments made by the ALJ during the hearing on Conexon's Motion to Intervene. Moreover, when Wisper finally did submit its application to the OCC, it misled the OCC by significantly understating its CAF-II broadband speed performance obligation.

²⁰ Feb. 28, 2019, Hearing Transcript, Docket No. PUD 201800154, p. SJ-2 (emphasis added) (Attachment C) (excerpt).

Now, Wisper seeks relief from the Commission for having not obtained ETC designation in Oklahoma by the February 25, 2019 deadline, despite deliberately choosing to wait nearly three months after the September 27, 2018 deadline established by the Commission for CAF-II winning bidders to file its Oklahoma ETC application (in order to secure a good faith presumption from the FCC).

3. Wisper's Criticisms of Conexon's Actions in the Oklahoma Proceeding Are Disingenuous and Without Merit.

On April 1, 2019, Wisper, at the request of OCC Public Utility Division staff, filed a Second Amended ETC Application with the OCC to provide information regarding the exchanges covered by the census blocks in which Wisper was declared the CAF-II winning bidder.²¹ Of course, this information could have been included in Wisper's initial ETC application, avoiding further delay, but the Company elected not to do so.²² An initial review by Wisper of prior ETC applications filed with the OCC would have made it abundantly clear that such exchange information would be required of Wisper as part of its ETC application.

On May 22, 2019, Wisper filed a Third Amended ETC Application to correct certain of the information it previously provided in list form in Exhibit H, included as part of Wisper's Second Amended Application.²³ In other words, Wisper's Second Amended Application

²¹ Wisper ISP, Inc., Application for Designation as an Eligible Telecommunications Carrier for Purposes of Receiving Federal Universal Service Support from the FCC Connect America Fund – Phase II, Second Amended Application, OCC Cause No. PUD 201800154 (filed Apr. 1, 2019).

²² In addition, Wisper waited until November 9, 2018, to register the Company as a Foreign for Profit business corporation with the Oklahoma Secretary of State. That filing could easily have been made months earlier by Wisper. See <https://www.sos.ok.gov/corp/corplnformation.aspx?id=2312714591>.

²³ Wisper ISP, Inc. Application for Designation as an Eligible Telecommunications Carrier for Purposes of Receiving Federal Universal Service Support from the FCC Connect America Fund – Phase II, Third Amended Application, OCC Cause No. PUD 201800154 (filed May 22, 2019).

included more errors, of Wisper's own making, that the Company needed to correct by way of a Third Amended ETC Application, further delaying action on Wisper's ETC application.

Against this factual background Wisper disingenuously accuses Conexon as being directly and solely responsible for the delays associated with Wisper's not yet obtaining ETC designation status in Oklahoma.²⁴ Wisper's attempt to shift the blame for its failure to meet the Commission's ETC designation deadline lacks any credible basis.²⁵ In fact, by making the "strategic determination" to wait until December 17, 2018 to file its initial ETC application, Wisper ensured there was no chance that Wisper would be granted ETC designation in Oklahoma by the February 25, 2019 deadline – even if Wisper's ETC application was unopposed.

²⁴ Wisper Petition for Waiver at 4 ("Any lack of strict compliance with the deadline is not the result of any delay or shortcoming on Wisper's part, but rather a consequence of Conexon's eleventh-hour intervention.").

²⁵ Wisper's conduct related to its Petition for Waiver, as well as in all of its state ETC application proceedings, should be concerning to the Commission. Rather than credibly responding to Conexon's substantive concerns regarding Wisper's representations in its ETC applications, Wisper has, instead, opted to engage in *ad hominem* attacks against Conexon and its ownership. See e.g., Amended Opposition to Motion to Intervene, OCC Cause No. 201800154 (filed Feb. 20, 2019), at 1 ("The [OCC] and the [FCC] provide regulatory oversight for ETCs, not unsuccessful, aggrieved CAF II participants like Conexon."); see also Verified Rebuttal Testimony of Nathan Stooke on behalf of Wisper, OCC Cause No. 201800154 (filed June 7, 2019) ("Mr. Chambers seems to think he still works as a regulator rather than as a private competitor. The FCC's rules on CAF II make it clear that it is the FCC's responsibility to decide whether a CAF II applicant is qualified. The FCC has determined that Wisper's proposed plans are viable."); Response to Staff Recommendation and Intervenor's Motion for Additional Time to Respond, Missouri PSC Case No. CA-2019-0196, at 2 (filed Feb. 8, 2019) ("Intervenors dress up their anti-competitive claims in an attempt to deputize themselves as protectors of the public interest. In fact, Intervenors are little more than sore losers."). These unfounded attacks are, perhaps, an attempt to deflect attention from the fact that the initial Wisper ETC application misrepresented Wisper's CAF-II performance obligations and was filed in December 2018, months after the September 27, 2018 deadline established by the Commission. The Commission's review of ETCs and licensees typically includes some due diligence as to a prospective ETC's or licensee's character and overall qualifications. The Commission should look closely at Wisper's conduct in each of its ETC application proceedings, as well as the information provided by Wisper in support of its CAF-II long-form application, to determine whether the Commission is confident that Wisper will meet its CAF-II performance obligations, and possesses the requisite character, financial and technical qualifications, before distributing any CAF-II support to Wisper.

Why? Because the OCC requires all ETCs in Oklahoma to obtain a Certificate of Public Convenience and Necessity (“CCN”) authorization as a prerequisite to obtaining ETC designation, and Wisper did not file its CCN Application with the OCC until February 1, 2019,²⁶ which was 157 days after the FCC’s Public Notice identified Wisper as a CAF-II winning bidder in Oklahoma and 127 days after the Commission’s September 27, 2018 “good faith” deadline for filing an ETC application as a CAF-II winning bidder.²⁷

In addition, Wisper’s CCN Application contained a significant error and Wisper failed to zealously prosecute its CCN Application once it was finally filed. Wisper’s initial CCN Application identified its service territory as including only the areas/exchanges served by Southwestern Bell Telephone d/b/a AT&T Oklahoma.²⁸ Wisper’s CCN Application included a “Notice of CCN Application,” which identified Wisper’s initial service territory as including only AT&T’s service area, and stated that any objections to its CCN Application must be filed within 30 days from the date of first publication.²⁹ Yet, Wisper failed to publish its CCN Notice until April 29, 2019, 87 days after filing its original CCN Application.³⁰

²⁶ See *In the Matter of the Application of Wisper ISP, Inc. for a Certificate of Public Convenience and Necessity to Provide Resold and Facilities-Based Local Exchange, Interexchange and Data Telecommunications Services Within the State of Oklahoma*, Application, Cause No. PUD 201900005 (filed Feb. 1, 2019).

²⁷ See *In the Matter of the Application of Wisper ISP, Inc. for a Certificate of Public Convenience and Necessity to Provide Resold and Facilities-Based Local Exchange, Interexchange and Data Telecommunications Services Within the State of Oklahoma*, Amended Application, OCC Cause No. PUD 201900005 (filed May 22, 2019) (“CCN Application”).

²⁸ *Id.* at 1.

²⁹ *Id.* at 52 (Exhibit R).

³⁰ See *Wisper CCN Application Proceeding*, Cause No. PUD 201900005, Proof of Publication, pp. 7-8.

In addition, Wisper's published CCN Notice varied from the Notice filed with its initial CCN Application by identifying its initial service territory as AT&T's and Windstream Communications Southwest.³¹ Wisper did not formally identify its initial service territory as including Windstream's service areas until Wisper filed an Amended CCN Application on May 22, 2019. Neither Conexon nor any third party filed an objection to Wisper's CCN Application – which remains pending.

The foregoing information unequivocally demonstrates that Conexon's intervention in Wisper's ETC proceeding was, in no way, the reason for Wisper's inability to obtain ETC designation. Rather, Wisper doomed any chance to obtain ETC designation in Oklahoma by the deadline when it (1) elected to file its initial ETC application on December 17, 2018; (2) failed to file its CCN Application until February 1, 2019; (3) then, as is required by OCC Rules,³² failed to publish Notice of its CCN Application until April 29, 2019; and (4) then needed to file an Amended CCN Application because it failed to include the Windstream areas/exchanges in its initial CCN Application. So, regardless of whether Conexon was granted intervenor status in Wisper's ETC application proceeding, Wisper would not have been granted ETC designation status by now because Wisper still has not obtained its CCN authorization from the OCC.

In short, Wisper's Petition for Waiver provides no credible support for its claim that its "efforts demonstrate that Wisper acted in 'good faith' by diligently taking all steps necessary to comply with the February 25, 2019 deadline."³³ Moreover, The calendar lays bare the absurdity

³¹ *Id.*

³² Okla. Admin. Code § 165-55-3-2(2).

³³ Wisper Petition for Waiver at 3-4.

of Wisper’s claim that Conexon’s “surpris[ing]”³⁴ intervention is the cause of Wisper’s “lack of strict compliance” with the Commission’s deadline:

- September 27, 2018 — The deadline for filing ETC applications in order for the Commission to presume the CAF-II auction winner was acting in good faith in pursuit of an ETC designation.
- November 9, 2018 — Wisper files as a Foreign for Profit Business Corporation with the Oklahoma Secretary of State.
- December 17, 2018 — Wisper files its ETC designation application in Oklahoma.
- January 10, 2019 — Wisper responds to data requests from OCC staff, which were issued 24 days earlier (on December 17, 2018).³⁵
- February 1, 2019 — Wisper’s initial filing of CCN Application with incomplete territory description (*e.g.*, Windstream territory mistakenly omitted by Wisper).
- February 19, 2019 — Conexon files for intervention in the Oklahoma proceeding.
- February 25, 2019 — The Commission’s deadline for obtaining ETC designation absent Bureau grant of a CAF-II winning bidder’s Petition for Waiver.
- February 27, 2019 — Wisper files Second Amended ETC Application.
- February 28, 2019 — ALJ recommends that Conexon’s Motion to Intervene be granted.
- March 21, 2019 — Wisper files motion to establish procedural schedule (which could have been filed weeks earlier).
- April 9, 2019 — Conexon’s intervention is approved by the OCC.
- April 29, 2019 — Wisper finally decides to publish its notice of CCN application (87 days after its initial CCN application filing).
- May 22, 2019 — Wisper files its Third Amended ETC Application.
- May 22, 2019 — Wisper files its Amended CCN Application.

³⁴ *Id.* at 3.

³⁵ *See id.* at 2.

As Conexon has demonstrated, well before Conexon's intervention in the Oklahoma proceeding, Wisper's own strategy of delay had doomed any prospect of Wisper's securing an ETC designation in Oklahoma before the Commission's February 25, 2019 deadline.

Ignoring these facts, Wisper states in its Petition for Waiver that it "...diligently and in good faith prosecuted its long-form applications and filed ETC applications for each of the states where it was the auction winner."³⁶ The Company also states that "...Wisper's efforts demonstrate that Wisper acted in 'good faith' by diligently taking all steps necessary to comply with the February 25, 2019 deadline."³⁷

While it is true that Wisper filed ETC applications (all of which included significant factual mistakes about Wisper's CAF-II broadband performance obligations) for each of the states where Wisper was a CAF-II winning bidder, it is not accurate for Wisper to state that the Company acted diligently or in good faith in prosecuting its CAF-II long-form application. Neither is it accurate for the Company to claim that it acted diligently or in good faith in the filing of any of its ETC applications. Purposefully filing an ETC designation in Oklahoma on December 17, 2018, as part of a strategy of delay, does not demonstrate a good faith effort to obtain OCC approval of the application by February 25, 2019.

Wisper also filed a Motion to Establish Procedural Schedule (with a proposed procedural schedule attached) on March 21, 2019. Wisper could have elected to file the motion weeks earlier. Wisper's initial proposed Procedural Schedule sought a Hearing on Merits on May 23,

³⁶ See *id.* at 3.

³⁷ See *id.* at 4.

2019.³⁸ Contrary to Wisper's statement that Conexon requested that "several additional weeks" be added to the Procedural Schedule,³⁹ Conexon suggested that a mere two weeks be added to the Procedural Schedule in order to afford Conexon reasonable time to meet certain procedural deadlines. Moreover, Wisper has not complied with all deadlines to date in the proceeding. For example, Wisper did not respond to Conexon's Data Requests No. 3 in compliance with the deadline for responding,⁴⁰ which necessitated a postponement of Conexon's deadline for filing its Responsive Testimony.

It is true that the OCC's availability was limited at the end of May 2019 due to previously scheduled hearings on a large rate case. But these kinds of delays in administrative hearings are common and should have been anticipated by Wisper.

Wisper could have avoided most, if not all, of these issues by: (1) simply filing its initial ETC application by September 27, 2018; (2) not waiting until November 9, 2018 to file its Certificate of Authority to do business in Oklahoma; (3) not waiting an additional 38 days after receiving its Certificate of Authority to file its initial ETC application with the OCC; (4) not waiting until February 1, 2019 to file the prerequisite CCN application; (5) not waiting 87 days to publish notice of its CCN application; (6) not waiting until May 22, 2019 to remedy its failure to properly identify its CCN service territory; and (7) filing factually accurate and complete ETC

³⁸ Wisper Motion to Establish Procedural Schedule, Docket No. 201800154, Exhibit A (filed Mar. 21, 2019) (Attachment D).

³⁹ Wisper ISP, Inc. Supplement to Petition for Waiver of Deadline for ETC Designation at 3.

⁴⁰ See Order Granting Motion to Establish Procedural Schedule, Cause No. PUD 201800154 (dated May 8, 2019) (parties are required to respond to data requests within five business days).

applications that, for example, included accurate CAF-II broadband speed obligations applicable to Wisper. Wisper has had to file three Amended ETC Applications due to errors – all of Wisper’s own making.⁴¹

B. Wisper’s Reliance on the Wireline Competition Bureau’s *Skybeam* Decision Is Misplaced.

In its Petition for Waiver, Wisper argues that grant of its Petition for Waiver would be consistent with the Wireline Competition Bureau’s (“Bureau”) decision in *Skybeam*.⁴² In *Skybeam*, the Bureau found good cause to grant Skybeam’s Petition for Waiver because Skybeam had diligently prosecuted its ETC application, but did not receive ETC designation until after the deadline because of the timing of the state commission’s next bench session.

Of course, there is one very big difference between the facts presented by Skybeam versus those presented by Wisper. Skybeam filed its ETC applications in each state with due diligence, fourteen (14) days after the Bureau released the Public Notice provisionally selecting

⁴¹ Wisper’s Supplement to its Petition for Waiver of Deadline for ETC Designation filed with the Commission also misrepresents the timeframe for a decision on Wisper’s pending ETC application. While Wisper states in the Supplement that “...a decision on Wisper’s ETC application is expected on or shortly after July 11, 2019 with an order entered the following week when the OCC meets for its scheduled meeting,” this is not accurate. Findings of Fact and Conclusions of Law filings are due ten (10) business days following a transcript of the Hearing on Merits being made available to the parties and the ALJ must file her Report with the OCC within 30 days following filing of the parties’ proposed Findings of Fact and Conclusions of Law. Only after the ALJ files her Report, can a Final ETC Designation Order be set on the OCC’s signing agenda. However, parties are permitted to file exceptions to the ALJ’s Report and request an *en banc* hearing on filed exceptions before the OCC Commissioners. A more realistic timeframe for an Order from the OCC on Wisper’s ETC application is in August or September 2019 – and that assumes, going forward, that Wisper complies with future deadlines set forth in the governing Procedural Schedule — a schedule agreed to by Wisper. See *Order Granting Motion to Establish Procedural Schedule*, Cause No. PUD 201800154, Order No. 695782 (May 8, 2019) (listing “the agreed” proposed procedural schedule deadlines) (Attachment E).

⁴² See *Wireline Competition Bureau Announces Rural Broadband Experiments Support for 15 Provisionally Selected Bids is Ready to be Authorized and Releases Updated Frequently Asked Questions*, 30 FCC Rcd 5038 (WCB 2015) (“*SkyBeam*”).

Skybeam for Rural Broadband Experiment (“RBE”) funding for projects in Kansas, Texas, Illinois, Iowa and Nebraska.⁴³ In the RBE proceeding, the Commission stated:

We expect entities selected for funding to submit their ETC applications to the relevant jurisdiction as soon as possible after release of the public notice announcing winning bids, and will presume an entity to have shown good faith if it files its ETC application within 15 days of release of the public notice. A waiver of the 90-day deadline would be appropriate if, for example, if [*sic*] an entity has an ETC application pending with a state, and the state’s next meeting at which it would consider the ETC application will occur after the 90-day window.⁴⁴

In the *Skybeam* case, the example cited by Wisper to bolster its argument as to why its Petition for Waiver should be granted, Skybeam filed its RBE-related ETC applications within the 15-day timeframe mandated by the Commission if an RBE winning bidder wanted the Commission to presume that it acted in good faith with respect to diligently pursuing ETC designation.

In contrast, by its own admission, Wisper made the “strategic determination” to wait **111 days** to file its ETC application with the OCC after the August 28, 2018 Public Notice released by the Commission announcing that Wisper was a CAF-II winning bidder in Oklahoma and five other states. Contrary to its claims, Wisper did not act in good faith, nor did Wisper act diligently to take the actions necessary to comply with the Commission’s deadline for obtaining ETC designation in Oklahoma. Any delay in receiving state approvals within the 180-day period established by the Commission can primarily, if not exclusively, be attributed to factors within Wisper’s control. As a result, Wisper’s Petition for Waiver should be denied, and Wisper should be declared by the Commission to be in default of its CAF-II compliance obligations.

⁴³ See Skybeam, LLC, Petition for Waiver of Deadline for ETC Designations, WT Docket Nos. 10-90, 14-58 and 14-259, at 2 (filed Mar. 5, 2015).

⁴⁴ See *Connect America Fund; ETC Annual Reports and Certifications*, 29 FCC Rcd 8769, 8778, n.52 (2014).

C. The Commission Should Declare That Wisper Is in Default of Its CAF-II Compliance Obligations in Kansas.

With respect to Wisper's CAF-II winning bids in Kansas, the Commission should declare that Wisper is in default of its CAF-II compliance obligations. While Wisper obtained its ETC designation order from the Kansas Corporation Commission ("KCC") by the February 25, 2019 deadline, Wisper's ETC designation order is premised on an inaccurate description of Wisper's CAF-II broadband performance obligations in Kansas.⁴⁵ Wisper's ETC designation order from the KCC was based upon Wisper's incorrect representation that Wisper was obligated to provide only 25/3 Mbps broadband service throughout its CAF-II winning areas in Kansas. Wisper made the same inaccurate representation about its CAF-II broadband performance obligations, representing that its CAF-II broadband performance obligation was to provide only 25/3 Mbps broadband service, in all six of its initial ETC applications. Of course, Wisper's actual CAF-II obligation is to provide 100/20 Mbps broadband service in most areas where Wisper was declared a CAF-II winner.

In the majority of the states where Wisper sought ETC designation status following the CAF-II auction, Wisper eventually supplemented the record in some manner to correct the fundamental error regarding Wisper's CAF-II broadband performance obligations, once the

⁴⁵ *In the Matter of the Application for Wisper ISP Inc. For Designation as an Eligible Telecommunications Carrier for Purposes of Receiving Federal Universal Service Support From the FCC Connect America Fund - Phase II*, Docket No. 19-WIIZ-225-ETC, Order Granting Eligible Telecommunications Carrier Status (Feb. 14, 2019) ("*Wisper ETC Designation Order*"), at pp. 2, 6, 7 (Attachment F). See Christine Aarnes, Chief of Telecommunications & SPP Affairs, Jeff McClanahan, Director of Utilities, Report and Recommendation, Utilities Division (Jan. 25, 2019) (Attachment to *Wisper ETC Designation Order*), at 1 (stating that "Wisper was awarded [by the FCC] \$1,607,524.30 total for Kansas, to be received over ten years, to provide broadband at 25 Megabits per second (Mbps) download and 3 Mbps upload with low-latency service of 100 milliseconds or better to 414 locations in specific areas in Kansas") (emphasis added).

error was identified by state officials or another party (e.g., Conexon). However, Wisper never corrected the record in Kansas.

After learning that every initial ETC application filed by Wisper was fundamentally flawed with respect to Wisper's depiction of its CAF-II broadband performance obligations, Wisper should have realized that its representation to the KCC as to the Company's CAF-II broadband performance obligations was similarly in error. Yet, according to Conexon's review of Wisper's ETC proceeding available on the KCC's website, Wisper chose not to correct the record in Kansas.⁴⁶

Wisper's ETC designation order from the KCC is premised on Wisper's incorrect representation that, as a CAF-II winning bidder, Wisper is obligated to provide only 25/3 Mbps broadband service in its CAF-II winning areas in Kansas. However, Wisper is obligated to provide 100/20 Mbps service, as a CAF-II winning bidder in Kansas. Therefore, the Commission should find that Wisper's failure to file a factually accurate ETC application with the KCC makes its ETC designation order from the KCC deficient and declare Wisper in default of its CAF-II obligations in Kansas.

D. Conexon Has Filed an Appeal with the Missouri Court of Appeals Raising Various Procedural and Substantive Issues Related to the Missouri Public Service Commission's Grant of ETC Status to Wisper.

Conexon is appealing the Order issued by the Missouri Public Service Commission ("Missouri PSC") granting Wisper ETC designation status in Missouri because Conexon, an intervenor in the case, was not permitted to conduct discovery, and the Commission refused to

⁴⁶ See KCC Docket No. 19-WIIZ-225-ETC (<http://estar.kcc.ks.gov/estar/portal/kcc/page/Dockets/portal.aspx>).

hold an evidentiary hearing in the case, thereby depriving Conexon and another intervening party of their due process rights. In fact, Wisper refused to respond to a single Data Request issued to Wisper by Intervenors, all of which were timely served.

In addition, Wisper's Missouri ETC application contained material misrepresentations which were not corrected by the date of Wisper's ETC designation order issued by the Missouri PSC, and Wisper's ETC application failed to comply with all applicable ETC requirements.

For example, on page 14 of Wisper's ETC application filed with the Missouri PSC, Wisper states that "[f]or its Missouri Census Blocks, Wisper committed to offer 25 Mbps download and 3 Mbps upload."⁴⁷ However, as noted earlier, Wisper actually committed to 100 Mbps download and 20 Mbps upload CAF-II broadband performance obligations in its CAF-II winning census blocks in Missouri. Wisper thus made a material misrepresentation to the Missouri PSC regarding Wisper's CAF-II obligations. Conexon maintains in its appeal that a correction should have been required by way of an Amended ETC Application prior to the Missouri PSC's grant of ETC designation.

⁴⁷ Application of Wisper ISP Inc. for Designation as an Eligible Telecommunications Carrier, Case No. CA-2019-0196, at 14 (filed Dec. 21, 2018). Wisper later submitted into the record information indicating that Wisper's CAF-II obligations in Missouri included the obligation to provide 100/20 Mbps broadband service, creating a discrepancy between the broadband speeds stated in the narrative of Wisper's Missouri ETC application and the speeds indicated in a late-filed Appendix to Wisper's Missouri ETC Application. Conexon asked Wisper to resolve the discrepancy by filing an amended ETC application, but Wisper was unwilling to file an amended ETC application and Wisper refused to respond to any discovery questions from Conexon. Therefore, the record created by Wisper about its CAF-II broadband performance obligations in Missouri includes conflicting information and the Missouri PSC's Order does not include language that resolves the discrepancy created by Wisper, raising into question the validity of Wisper's ETC Order from the Missouri PSC.

Wisper also admitted in its Missouri ETC application proceeding that, in the event of a failure of the IP connection or the local AC power, its VoIP service, including the E911 feature, will not function.⁴⁸ Of course, the provision of E911 services is a requirement for all ETCs.⁴⁹

Through Data Requests, Conexon sought further information regarding concerns about Wisper's ability to provide customer access to critical E911 services in certain situations.

Wisper never responded to Conexon's Data Requests in the Missouri proceeding.

Conexon has provided the Missouri PSC and counsel to Wisper legal notice of Conexon's appeal filed in the Missouri Court of Appeals, Western District.⁵⁰

E. Facts Reveal That Wisper Has Failed To Show Good Cause for the Grant of Its Petition for Waiver.

It is worth noting that at least twelve different entities, including Wisper, were declared CAF-II winning bidders in Oklahoma. However, by waiting 111 days after being identified by the Commission as a CAF-II winning bidder to submit its ETC application, Wisper is in a league of its own when it comes to exhibiting a lack of diligence in meeting its obligation to obtain ETC designation. Wisper did not comply with one of the most important post-auction obligations of all CAF-II winning bidders – obtaining ETC designation by February 25, 2019 from the OCC.

The primary reason Wisper did not obtain ETC designation status in Oklahoma by the deadline is because the Company made the “strategic determination” not to file its ETC

⁴⁸ See *id.* at 16.

⁴⁹ See *e.g.*, 47 C.F.R. § 54.101(a)(1).

⁵⁰ See *Conexon, LLC v. Missouri Public Service Comm.*, Mo. Ct. App., W.D., Case No. WD82727, Notice of Appeal (filed Apr. 12, 2019) (Attachment G).

application with the OCC until December 17, 2018, then failed to properly prosecute its ETC application in accordance with the OCC's rules, prompting a rebuke from the ALJ.

Wisper had to amend its ETC application three times to plug factual holes and correct errors of its own making. Further, Wisper elected to wait until November 9, 2018 to register with the Oklahoma Secretary of State and waited until February 1, 2019 to file its initial CCN Application, a prerequisite to obtaining ETC designation in Oklahoma. Then, Wisper waited 87 days to publish notice of its initial CCN Application. Failing to include the Windstream areas/exchanges in its initial CCN Application required an Amended CCN Application on May 22, 2019.

The Commission's Rules allow the agency to waive a rule for good cause shown. Waiver is appropriate, for example, where "particular facts would make strict compliance inconsistent with the public interest."⁵¹ This is not the case here. The facts presented by Wisper in support of its Petition for Waiver are not compelling and do not support its request for waiver.

III. CONCLUSION.

Wisper clearly has not provided good reason for the Commission to grant its Petition for Waiver. Therefore, the Commission should deny Wisper's Petition and find Wisper to be in default of its CAF-II obligations in Oklahoma.

In addition, the Commission should find that Wisper's failure to file a factually accurate ETC application with the KCC makes its ETC designation order from the KCC deficient. The Commission should declare Wisper to be in default of its CAF-II obligations in Kansas too, and

⁵¹ See *Northeast Cellular Telephone Company v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

should take account of the fact that Wisper's ETC designation issued by the Missouri PSC is the subject of an appeal filed by Conexon in the Missouri Court of Appeals.

Respectfully submitted,

/s/ Jonathan Chambers

Jonathan Chambers
Partner
Conexon, LLC
2001 Grand Blvd., Suite 700
Kansas City, MO 64108
Phone: (202) 798-3884

June 12, 2019

CERTIFICATE OF SERVICE

I hereby certify that, on this 12th day of June, 2019, a true and correct copy of the foregoing Opposition of Conexon, LLC to Wisper ISP, Inc. Petition for Waiver of Deadline for ETC Designation was submitted electronically to the Federal Communications Commission, and was served via U.S. Mail, postage prepaid, to the following:

Stephen E. Coran
Lerman Senter PLLC
2001 L Street, N.W., Suite 400
Washington, DC 20554

Kristopher E. Twomey
Law Office of Kristopher E. Twomey, P.C.
1725 I Street, N.W., Suite 300
Washington, DC 20006

/s/ Jonathan Chambers

Jonathan Chambers

ATTACHMENT A

FILED
DEC 17 2018

STATE OF OKLAHOMA
OKLAHOMA CORPORATION COMMISSION

COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA

Wisper ISP Inc.

Docket No. **PUD201800154**

Application for Designation as an Eligible
Telecommunications Carrier for Purposes of
Receiving Federal Universal Service Support
From the FCC Connect America Fund – Phase II

**APPLICATION OF WISPER ISP INC. FOR DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER (PUBLIC VERSION)**

Now comes Wisper ISP Inc. ("Wisper") and pursuant to the Telecommunications Act of 1996, 47 U.S.C. §214(e)(2) (the "Act") and the rules of the Federal Communications Commission ("FCC") 47 C.F.R. §54.201, hereby requests that the Oklahoma Corporation Commission ("Commission") designate Wisper as a telecommunications carrier eligible under the provisions of Section 54.201(d) to receive federal universal service support. Wisper seeks ETC designation in order to receive support from the Connect America Fund ("CAF") Phase II.

Wisper is an Illinois corporation incorporated by Nathan Stooke, having a principal place of business and mailing address of 9711 Fuesser Road, Mascoutah, IL 62258. Wisper will also be applying for a certificate of convenience and necessity to provide telecommunications services to support its efforts in deploying broadband and voice services in Oklahoma pursuant to the requirements of CAF Phase II. Attached as Exhibit E is the Certificate of Authority issued by the Oklahoma Secretary of State authorizing Wisper to do business in Oklahoma.

By *Public Notice* dated August 28, 2018, the FCC provisionally selected Wisper for CAF support of fifty-one (51) census blocks covering two thousand four hundred forty-three

ATTACHMENT B

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Wisper ISP, Inc.)	
)	
Application for Designation as an Eligible)	CAUSE NO. PUD 201800154
Telecommunications Carrier for Purposes of)	
Receiving Federal Universal Service Support)	
From the FCC Connect America Fund – Phase II)	

**RESPONSES AND OBJECTIONS OF WISPER ISP, INC. TO
CONEXON, LLC'S DATA REQUEST NO. 2**

COMES NOW Wisper ISP, Inc. ("Wisper") and for its responses and objections to certain data requests propounded by Conexon, LLC ("Conexon") in its Data Request No. 2 to Wisper, states as follows:

I. GENERAL OBJECTIONS

Wisper objects generally to each of the Data Requests and Interrogatories propounded by Conexon in its Data Request No. 2 to Wisper to the extent the Data Requests seek information that constitutes attorney work product or which is protected by the attorney/client privilege and to the extent that the Data Requests seek the disclosure of Wisper's mental impressions, conclusions, opinions or legal theories of its attorneys concerning this proceeding. Wisper objects to the Instructions and Definitions propounded by Conexon to the extent that any instruction or definition differs from, or is in conflict with, the requirements of the Oklahoma Corporation Commission Rules pertaining to discovery. Wisper's answers and responses, as well as any supplements thereto, are made in conformance with such rules.

No. 2-10 Please explain why Mr. Stooke's Declaration, included with Wisper's initial ETC application, and filed under penalty of perjury, in this proceeding was dated November 17, 2018, and notarized one month prior to the date Wisper actually filed its ETC application with the Oklahoma Corporation Commission.

Wisper Response: Wisper objects that this request is irrelevant and unlikely to lead to the discovery of admissible evidence. Mr. Stooke signed the declaration on November 17, 2018, upon completion of a draft of the application by Wisper's counsel. Wisper's counsel made the strategic determination to wait until December 17, 2018, to file the application.

ATTACHMENT C

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BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA

WISPER ISP, INC.)	
)	
APPLICATION FOR DESIGNATION AS AN ELIGIBLE)	
TELECOMMUNICATIONS CARRIER FOR PURPOSES OF)	PUD CAUSE NO.
RECEIVING FEDERAL UNIVERSAL SERVICE SUPPORT)	201800154
FROM THE FCC CONNECT AMERICA FUND-PHASE II)	

TRANSCRIPT OF PROCEEDINGS
FEBRUARY 28, 2019

OFFICIAL REPORTER:
SUSAN JOHNSON C.S.R.

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THE COURT: We will open the record today in PUD 2018-154. This is the application of Wisper ISP, Incorporated, for designation as an ETC for purposes of receiving federal universal service support from the FCC Connect America Fund phase two.

Please enter your appearances. We'll start here in the courtroom.

MS. HENSLEY: Lauren Hensley for the Public Utility Division.

THE COURT: And on the telephone, who do we have? Michael Torrone on behalf of the movant, Conexon.

MR. ALLEN: Reagan Allen on behalf of Wisper.

THE COURT: Okay.

MR. TWOMEY: And Kristopher Twomey on behalf of Wisper.

MS HENSLEY: Your honor?

THE COURT: Ms. Hensley?.

MS. HENSLEY: I would just ask whether or not Mr. Twomey is entering an appearance as an attorney on behalf of the applicant in this case. I have not seen that that attorney has submitted any paperwork stating that they've complied with the laws of Oklahoma in order to participate.

THE COURT: Mr. Twomey or Mr. Allen can you respond to these concerns?

1 MR. ALLEM: Mr. Twomey is not going to be
2 presenting argument today. I would do that on behalf of
3 Wisper. He's just here just kind of listening in.

4 THE COURT: Okay. And this is the first hearing
5 in this cause, I believe, and I would just caution, or ask
6 that all parties make sure that you're reading the rules of
7 the Commission, the rules of practice, and the rules that
8 are applicable to this cause.

9 I mean, I reviewed the application and there's -- I
10 mean, there's no bar number, no contact information of
11 Counsel. There's apparently a request that an order issue
12 no later than February 20th, but no notice of hearing, no
13 hearing was scheduled.

14 This cause was filed December 17th. Seems like plenty
15 of time to have a hearing, but no hearing that has been
16 scheduled or noticed, so I think that if Counsel had been
17 on top of this case and read the rules, we probably
18 wouldn't be here today.

19 We would have been to final order in this case, or at
20 least been farther along in this case than we are right
21 now. We do not like to have cases start off like this,
22 where, you know, it just sits there for several months. So
23 I don't really want to start any kind of arguments on this
24 topic, but let me just say, I expect all Counsel to first
25 of all be able to practice in this cause; and secondly, to

1 read the rules, and let's process this cause according to
2 the rules.

3 Is that understood by everyone?

4 Ms. Hensley?

5 MS. HENSLEY: Yes, your Honor.

6 THE COURT: Mr. Torrone?

7 MR. TORRONE: Yes, your Honor.

8 THE COURT: Mr. Allen?

9 MR. ALLEN: Yes, your Honor.

10 THE COURT: Okay. Thank you.

11 Now I guess the movant, Mr. Torrone, you filed a
12 motion today, would you like to speak to that motion?

13 MR. TORRONE: Yes, your Honor.

14 THE COURT: Okay. And before you get started let
15 me also say that the only reason that we are doing this
16 hearing telephonically because of the weather in Oklahoma.

17 We have a lot of areas in Oklahoma where it's icy and
18 dangerous. Typically, we do not have protested matters
19 like this, at least I haven't had protested matters like
20 this conducted telephonically.

21 I didn't see via e-mail. There was an e-mail
22 conversation between all the parties. I didn't see that
23 there was an outright objection to this, and I think that
24 Counsel for PUD stated that they were okay under this
25 limited circumstance, and I'm, accordingly, limited

ATTACHMENT D

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

Wisper ISP Inc.

Application for Designation as an Eligible
Telecommunications Carrier for Purposes of
Receiving Federal Universal Service Support
From the FCC Connect America Fund
– Phase II

Docket No. PUD 201800154

FILED
MAR 21 2019

COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA

MOTION TO ESTABLISH PROCEDURAL SCHEDULE

COMES NOW Wisper ISP Inc. ("Wisper" or "Applicant") and requests this Oklahoma Corporation Commission ("Commission") to issue an order establishing a procedural schedule in the above styled and numbered Cause. The procedural schedule proposed by Wisper is attached hereto as Exhibit A. In support of its Motion, Wisper alleges and states as follows:

1. On December 17, 2018, Wisper filed its Application in this cause requesting that the Commission issue an order designating Wisper as a telecommunications carrier eligible under the provisions of Section 54.201(d) to receive federal universal service support. Staff requested additional information in order to complete Wisper's Application.
2. On February 27, 2019, Wisper filed its First Amended Application to include information requested by Staff. However, such application was still incomplete and missing a necessary exhibit.
3. On or about February 18, 2019, Conexon, LLC ("Conexon") filed its Motion to Intervene and such intervention was allowed on a narrowed basis.
4. Because of Conexon's intervention, this matter has now become contested resulting in the need to establish a procedural schedule.
5. The Commission has jurisdiction to grant the relief requested herein by virtue of

Article IX, Section 18 of the Constitution of the State of Oklahoma and 17 OS §131 et seq.

WHEREFORE, premises considered, Wisper respectfully requests that the Commission issue an order establishing a procedural schedule that will provide for the timely and thoughtful disposition of this Cause.

Respectfully submitted,

s/ Reagan D. Allen

Reagan D. Allen – OBA Bar #19739
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(580) 233-3522 Fax
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and

Kristopher E. Twomey
Law Office of Kristopher E. Twomey, P.C.
1725 I Street, N.W.
Suite 300
Washington, DC 20006
202.681.1850
kris@lokt.net

CERTIFICATE OF SERVICE

I, Reagan D. Allen, with the law firm of Long, Claypole & Blakely Law, PLC, hereby certify that on the 20th day of March, 2019, a true and correct copy of the foregoing Motion for Protective Order was mailed, emailed, or hand-delivered to the following:

Lauren D. Hensley, Assistant General Counsel
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Brandy Wreath, Director
Ryan Hedrick, Public Utility Regulatory Analyst
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s/ Reagan D. Allen
Reagan D. Allen

EXHIBIT A

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

Wisper ISP Inc.

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Docket No. PUD 201800154

Application for Designation as an Eligible
Telecommunications Carrier for Purposes of
Receiving Federal Universal Service Support
From the FCC Connect America Fund
– Phase II

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HEARING: March 28, 2019, in Courtroom B
2010 North Lincoln Blvd., Oklahoma City, OK 73105
Before Mary Candler, Administrative Law Judge

APPEARANCES: Lauren Hensley, General Counsel representing the Public Utility Division,
Oklahoma Corporation Commission
Reagan D. Allen, Attorney representing Applicant Wisper ISP, Inc.
Michael T. Torrone, Attorney representing Intervenor Conexon, LLC

ORDER ESTABLISHING PROCEDURAL SCHEDULE

This cause comes before the Oklahoma Corporation Commission (the "Commission") on the motion of Applicant Wisper ISP, Inc. ("Wisper" or "Applicant") for an Order Establishing Procedural Schedule ("Motion") setting dates for the prosecution of the above captioned Cause. The Administrative Law Judge ("ALJ") approved the proposed procedural schedule agreed to by the parties as set forth herein.

On March 21, 2019, Wisper filed its Motion for Order Establishing Procedural Schedule. The Motion came on for hearing before the ALJ on March 28, 2019, at which time counsel for the parties announced the following agreement on the dates for the processing of the Cause:

DATE	ACTION
Tuesday, April 2, 2019	Direct Testimony Filed along with a summary of that testimony
Friday, April 12, 2019	Discovery Cut-off for Direct Testimony
Friday, April 26, 2019	Deadline for filing Responsive Testimony along with a summary of that testimony
Tuesday, April 30, 2019	Deadline for filing Statements of Position, and

	Deadline for any Direct Legal Brief
Friday, May 10, 2019	Deadline for Rebuttal Testimony along with a summary of that testimony; Deadline for any Responsive Legal Brief
Tuesday, May 14, 2019	Discovery Cut-off for Responsive Testimony; Deadline for Pretrial Motions
Thursday, May 16, 2019	Discovery Cut-off for Rebuttal
Thursday, May 23, 2019 at 10:00 a.m.	Pre-hearing conference; all Pre-trial motions heard
Thursday, May 23, 2019 at 10:30 a.m.	Hearing on Merits

GENERAL PROVISIONS

I. ORDER AND PRESENTATION OF TESTIMONY

The hearing on the merits shall be heard before ALJ Mary Candler. The hearing shall commence on May 23, 2019 at 8:30 a.m. and continue until the record is closed. The hearing shall continue each day thereafter, until the record is closed, unless otherwise directed by the Commission. The hearing will be heard in Courtroom B of the Jim Thorpe Office Building, unless the Commission directs otherwise.

A. WISPER ISP INC.

1. At the commencement of the hearing, each witness(es) pre-filed direct testimony and/or rebuttal testimony shall be entered into the record in lieu of oral direct testimony.
2. After the pre-filed direct testimony and/or rebuttal testimony of the witness(es) have been submitted into the record, the witness(es) shall be tendered for oral cross-examination and redirect examination.
3. Any redirect examination will be limited to issues that were raised during cross-examination.

B. INTERVENORS

1. After Wisper has presented its pre-filed responsive testimony and/or rebuttal testimony, each Intervenor shall have their witness(es) pre-filed responsive testimony entered into the record in lieu of oral testimony.

2. After the pre-filed responsive testimony and/or rebuttal testimony of the witness(es) have been submitted into the record, the witness(es) shall be tendered for oral cross-examination and redirect examination.
3. Any redirect examination will be limited to issues that were raised during cross-examination.
6. As is set forth in the Commission's order allowing intervention, the Intervenor's participation in this matter shall not include litigation of matters regarding the CAF-II funding process or award selection previously decided by the Federal Communications Commission. Therefore, Intervenor's Statement of Position, testimony, rebuttal testimony, oral sur-rebuttal and any testimony during oral cross-examination and redirect examination shall not include such subjects or matters.

C. ATTORNEY GENERAL

1. After Intervenors have presented their responsive testimony and/or rebuttal testimony, the Attorney General shall have his witness(es) pre-filed responsive testimony and/or rebuttal testimony submitted into the record in lieu of oral responsive or rebuttal testimony.
2. After the pre-filed responsive testimony and/or rebuttal testimony of the witness(es) have been submitted into the record, each witness(es) shall be tendered for oral cross-examination and redirect examination.
3. Any redirect examination will be limited to issues that were raised during cross-examination.

D. PUBLIC UTILITY DIVISION STAFF

1. After Intervenors and the Attorney General have presented their responsive testimony, Staff shall have its witness(es) pre-filed responsive testimony and/or rebuttal testimony submitted into the record in lieu of oral responsive testimony.
2. After the pre-filed responsive testimony and/or rebuttal testimony of the witness(es) have been submitted into the record, the witness shall be tendered for oral cross-examination and redirect examination.
3. Any redirect examination will be limited to issues that were raised during cross-examination.

E. SUR-REBUTTAL

1. Due to Wisper having the burden of proof and consistent with the Order of Proof specified in OAC 165:5-13-3(f), after other parties have presented their testimony, and statements of positions, Wisper may be allowed to present oral sur-rebuttal

testimony provided Wisper can show that other parties have raised new issues which Wisper was unable to adequately address through cross-examination. The oral sur-rebuttal shall be strictly limited to the new issues.

2. Once Wisper has presented its oral sur-rebuttal testimony, the witness(es) shall be tendered for cross and redirect examination. Any cross-examination shall be limited to the issues addressed in the sur-rebuttal testimony. Any redirect examination will be limited to issues that were raised during cross-examination.
3. After Wisper's sur-rebuttal testimony and cross-examination, if any party deems it necessary to request of the Commission that it be allowed to present further rebuttal type testimony, the Commission shall evaluate the request and make a determination based on the following criteria:
 - a. Whether or not any new issues have been raised during oral sur-rebuttal.
 - b. Whether or not the party was able to adequately respond to the new issue during cross-examination.
 - c. Whether or not additional testimony/evidence IS needed as a matter of due process to the requesting party.
 - d. Whether or not the additional testimony/evidence is necessary to perfect the record.
 - e. Whether or not the additional testimony/evidence is cumulative in nature and has been previously and sufficiently addressed.
 - f. Whether or not any statutorily imposed time will permit further testimony/evidence.

II. SUMMARIES AND STATEMENTS OF POSITION, EXHIBITS AND AGREEMENTS BETWEEN THE PARTIES (PROCEDURE FOR DISCOVERY, OBJECTIONS AND SUSPENDING PROCEDURAL SCHEDULE)

A. DISCOVERY AND OBJECTIONS

1. Responses to discovery requests on Wisper's direct testimony shall be due five (5) business days from receipt. Responses to discovery requests on responsive and rebuttal testimony shall be due five (5) calendar days from receipt. Any objections to a discovery request shall be in writing and presented by the objecting party within three (3) business days of the receipt of the discovery request. A hearing on such objections shall be set within two (2) business days, unless specifically set on dates that are otherwise agreed to in advance and in writing by the parties.

2. Calculation of days for discovery purposes shall be determined to be on or before 3:00 p.m. Any filing or service made after 3:00 p.m. shall be deemed to be the following business day.
3. Any objections regarding the testimony or qualification of any witness shall be filed by motion and set for hearing prior to the commencement of the hearing on the merits. Where an objection due date falls on a Saturday, Sunday or a legal holiday, the objection must be presented the following business day. A hearing on such objections shall be set at the discretion of the Commission after consultation with the parties.
4. Data requests and responses are not required to be filed with the Court Clerk's Office but shall be provided to all parties of record and may be referred to and utilized as exhibits at the hearing on the merits in this cause.
5. Data Requests are limited to no more than twenty-five (25) per day, including subparts, and responses must be served by electronic transmission, facsimile or hand delivery.

B. TESTIMONY SUMMARIES, STATEMENTS OF POSITION AND EXHIBITS

1. The parties shall file of record and exchange between the parties, summaries of their respective prefiled testimony and, as applicable, statements of position on or before the dates outlined above. Summaries of testimony shall be used in the preparation of the final order and shall be transmitted to all parties and the Commissioners in electronic format.
2. The summaries and statements of position may be referred to and utilized as exhibits in the case. Any party not filing testimony and desiring to cross-examine witnesses at the hearing must file a position statement on or before April 30, 2019. The Statement of Position shall clearly and concisely provide a party's position regarding all major issues in the Cause.
3. Each party presenting or cross examining any witness, on or before May 8, 2019, shall file of record and exchange between the parties, an exhibit list of all potential exhibits which may be utilized at the hearing in support of direct, responsive and rebuttal testimony.
4. However, if for good cause shown a party finds it necessary during the hearing to present an additional exhibit(s) which was not listed on the exhibits list, such exhibits(s) shall not be allowed unless submitted to all parties at least twenty-four (24) hours prior to the usage and permitted by the Commission. The parties reserve the right to waive this provision by agreement of the parties.
5. In addition, with respect to any additional exhibits not already produced during discovery that will be used by a party during oral rebuttal testimony, such exhibits(s)

shall not be allowed unless submitted to all parties at least four (4) days prior to the usage and permitted by the Commission. The parties reserve the right to waive this provision by agreement of the parties.

C. AGREEMENTS BETWEEN THE PARTIES

1. If the parties are able to dispose of the issues of this Cause by way of negotiated settlement, subsequently approved by the Commission, the dates contained herein may be modified as may be appropriate.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

THE COMMISSION FINDS that it is vested with jurisdiction in this Cause pursuant to Article IX, Section 18 of the Oklahoma Constitution and 17 O.S. Sections 131 *et seq.*

THE COMMISSION FURTHER FINDS that the procedural schedule and the General Provisions set forth herein should be adopted by the Commission and adhered to by the parties until modified by subsequent Commission order.

THE COMMISSION FURTHER FINDS that if the parties are able to dispose of the issues of this Cause by way of negotiated settlement, subsequently approved by the Commission, the dates contained herein may be modified as may be appropriate.

ORDER

THE COMMISSION ORDERS that the findings of fact and conclusions of law herein shall become the order of the Commission.

THE CORPORATION COMMISSION FURTHER ORDERS that the procedural schedule and general provisions as set forth herein shall be adhered to by and between the parties to this Cause and the same shall become the order of the Commission.

THIS ORDER SHALL BE EFFECTIVE IMMEDIATELY.

CORPORATION COMMISSION OF OKLAHOMA

DANA L. MURPHY, Chairman

J. TODD HIETT, Vice-Chairman

BOB ANTHONY, Commissioner

CERTIFICATION

DONE AND PERFORMED by the Commissioners participating in the making of this order, as shown by their signatures above, this ____ day of _____, 2019.

[seal]

Secretary

REPORT OF THE ADMINISTRATIVE LAW JUDGE

The foregoing findings, conclusions and order are the report and recommendations of the undersigned administrative law judge.

MARY CANDLER
Administrative Law Judge

Date

ATTACHMENT E

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

ms
mc
Wisper ISP Inc.)

CAUSE NO. PUD 201800154

)
Application for Designation as an Eligible)
Telecommunications Carrier for Purposes of)
)
Receiving Federal Universal Service Support)
)
From the FCC Connect America Fund – Phase II)

ORDER NO. **695782**

HEARING: March 28, 2019, and April 25, 2019, in Courtroom B
2010 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105
Before Mary Candler, Administrative Law Judge

APPEARANCES: Lauren D. Hensley, Assistant General Counsel *representing* Public
Utility Division, Oklahoma Corporation Commission
J. David Jacobson and Reagan D. Allen, Attorneys *representing*
Wisper ISP, Inc.
Michael T. Torrone and C. Austin Ervin, Attorneys *representing*
Conexon, LLC

ORDER GRANTING MOTION TO ESTABLISH PROCEDURAL SCHEDULE

BY THE COMMISSION:

The Corporation Commission ("Commission") of the State of Oklahoma being regularly in session and the undersigned Commissioners present and participating, there comes on for consideration and action the Motion to Establish Procedural Schedule ("Motion") filed by Wisper ISP, Inc. ("Wisper" or "Applicant") setting dates for the prosecution of the above captioned Cause. The Administrative Law Judge ("ALJ") approved the proposed procedural schedule agreed to by the parties as set forth herein.

On March 21, 2019, Wisper filed its Motion to Establish Procedural Schedule. The Motion came on for hearing before the ALJ on March 28, 2019, at which time counsel for the parties announced agreement on the dates for the processing of the Cause. However, on April 25, 2019, the record was reopened and the parties discussed revised procedural dates. The following are the agreed proposed dates:

DATE	ACTION
May 24, 2019	Deadline for filing Responsive Testimony along with a summary of that Testimony
May 28, 2019	Deadline for filing Statements of Position, and Deadline for any Direct Legal Brief
June 7, 2019	Deadline for filing Rebuttal Testimony along with a summary of that Testimony; Deadline for any Responsive Legal Brief
June 25, 2019	Deadline for Pretrial Motions
July 11, 2019, at 10:00 a.m. in Courtroom B	Pre-hearing conference; all Pre-trial motions heard

July 11, 2019, at 10:30 a.m. in Courtroom B	Hearing on Merits
10 business days following a transcript of the Hearing on the Merits being made available to the parties	Findings of Fact and Conclusions of Law filed and provided electronically to ALJ in Word format
30 calendar days following filing of proposed Findings of Fact and Conclusions of Law	ALJ Report filed

On April 2, 2019, Verified Direct Testimony of Nathan Stooke on Behalf of Wisper ISP, Inc. was filed.

GENERAL PROVISIONS

The Hearing on the Merits shall be heard before the ALJ. The hearing shall commence on July 11, 2019, at 10:30 a.m. and shall continue each day thereafter, until the record is closed, unless otherwise directed by the ALJ. The hearing will be heard in Courtroom B of the Jim Thorpe Office Building, unless the ALJ directs otherwise.

ORDER AND PRESENTATION OF WITNESSES:

The following order of witnesses shall be followed unless otherwise directed by the Commission or the ALJ:

1. Wisper
2. All Intervenors
3. Public Utility Division

PREFILED TESTIMONY:

The order of proof shall be governed by OAC 165:5-13-3(f) which states in part that the applicant who institutes a cause may open and close the proof.

After admittance of the pre-filed testimony (direct, responsive, rebuttal) into the record, each witness shall then be permitted to offer oral surrebuttal testimony in response to any new matters raised in the rebuttal testimony of the other parties. Prefiled testimony may not be read into the record at the Hearing on the Merits unless leave to do so is granted by the Commission or the ALJ. All prefiled testimony shall be sworn testimony and notarized reflecting such.

After the pre-filed testimony (direct, responsive, rebuttal) and oral surrebuttal testimony of the witness has been submitted into the record, the witness shall be tendered for oral cross-examination and re-direct examination. Any redirect examination will be limited to issues which were raised during cross-examination.

SUR-REBUTTAL

1. Due to Wisper having the burden of proof and consistent with the Order of Proof specified in OAC 165:5-13-3(f), after other parties have presented their testimony and statements of positions, Wisper may be allowed to present oral sur-rebuttal

testimony provided Wisper can show that other parties have raised new issues which Wisper was unable to adequately address through cross-examination. The oral sur-rebuttal shall be strictly limited to the new issues.

3. After Wisper's sur-rebuttal testimony and cross-examination, if any party deems it necessary to request of the Commission that it be allowed to present further rebuttal type testimony, the Commission shall evaluate the request and make a determination based on the following criteria:
 - a. Whether or not any new issue(s) have been raised during oral sur-rebuttal.
 - b. Whether or not the party was able to adequately respond to the new issue(s) during cross-examination.
 - c. Whether or not additional testimony/evidence is needed as a matter of due process to the requesting party.
 - d. Whether or not the additional testimony/evidence is necessary to perfect the record.
 - e. Whether or not the additional testimony/evidence is cumulative in nature and has been previously and sufficiently addressed.
 - f. Whether or not any statutorily imposed time will permit further testimony/evidence.

SUMMARIES AND STATEMENTS OF POSITION, EXHIBITS AND AGREEMENTS BETWEEN THE PARTIES (PROCEDURE FOR DISCOVERY, OBJECTIONS AND SUSPENDING PROCEDURAL SCHEDULE)

DISCOVERY AND OBJECTIONS

Discovery shall be conducted pursuant to OAC 165:5-11-1, except as otherwise stated below.

1. Responses to discovery requests on Wisper's direct testimony shall be due five (5) business days from receipt. Responses to discovery requests on responsive and rebuttal testimony shall be due five (5) calendar days from receipt. Any objections to a discovery request shall be specific, in writing and presented by the objecting party within three (3) business days of the receipt of the discovery request. A hearing on such objections shall be set by agreement of the parties or at the direction of the ALJ.
2. Calculation of days for discovery purposes shall be determined to be on or before 3:00 p.m. Any discovery requests received after 3:00 p.m. shall be deemed to be received the following business day.
3. All times specified herein for filing documents shall be determined to be 4:30 p.m., unless specified otherwise.
4. Any objections regarding the testimony or qualification of any witness shall be filed by motion and set for hearing prior to the commencement of the Hearing on the Merits. Where an objection due date falls on a Saturday, Sunday or a legal holiday,

the objection must be presented the following business day. A hearing on such objections shall be set by agreement of the parties or at the direction of the ALJ.

5. Data requests and responses are not required to be filed with the Court Clerk's Office but shall be provided to all parties of record and may be referred to and utilized as exhibits at the Hearing on the Merits in this Cause.
6. Data Requests are limited to no more than twenty-five (25) per day per party, including subparts, and responses must be served by electronic transmission, facsimile or hand delivery.
7. The cutoff date for all discovery shall be May 30, 2019.

TESTIMONY SUMMARIES, STATEMENTS OF POSITION AND EXHIBITS

1. The parties shall file of record and exchange between the parties summaries of their respective prefiled testimony and, as applicable, statements of position on or before the dates outlined above. Summaries of testimony shall be used in the preparation of the final order and shall be transmitted to all parties and the ALJ in electronic format.
2. The summaries and statements of position may be referred to and utilized as exhibits in the case. Any party not filing testimony and desiring to cross-examine witnesses at the hearing must file a statement of position on or before May 28, 2019. The Statement of Position shall clearly and concisely provide a party's position regarding all major issues in the Cause.
3. Each party presenting or cross examining any witness, on or before July 2, 2019, shall file of record and exchange between the parties, an exhibit list of all potential exhibits which may be utilized at the hearing in support of direct, responsive and rebuttal testimony.
4. However, if for good cause shown, a party finds it necessary during the hearing to present an additional exhibit(s) which was not listed on the exhibit list, such exhibit(s) shall not be allowed unless submitted to all parties at least twenty-four (24) hours prior to the usage and permitted by the ALJ. The parties reserve the right to waive this provision by agreement of the parties.
5. In addition, with respect to any additional exhibits not already produced during discovery that will be used by a party during oral rebuttal testimony, such exhibit(s) shall not be allowed unless submitted to all parties at least four (4) days prior to the usage and permitted by the ALJ. The parties reserve the right to waive this provision by agreement of the parties.

AGREEMENTS BETWEEN THE PARTIES

1. If the parties are able to dispose of the issues of this Cause by way of negotiated settlement, the dates contained herein may be modified.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Each party shall file proposed findings of fact and conclusions of law within ten (10) business days following a transcript of the Hearing on the Merits being made available to the parties. The proposed findings of fact and conclusions of law shall be provided to the ALJ in Word format within one (1) business day of being filed. Proposed findings of fact and conclusions of law shall contain citations to supporting testimony and/or hearing exhibits and/or relevant legal authority.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

THE COMMISSION FINDS that it is vested with jurisdiction in this Cause pursuant to Article IX, Section 18 of the Oklahoma Constitution and 17 O.S. Sections 131 *et seq.*

THE COMMISSION FURTHER FINDS that the procedural schedule and the General Provisions set forth herein should be adopted by the Commission and adhered to by the parties until modified by subsequent Commission order or direction of the ALJ.

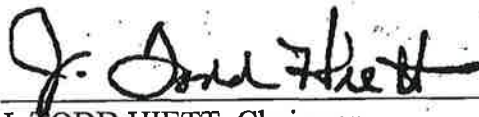
THE COMMISSION FURTHER FINDS that if the parties are able to dispose of the issues of this Cause by way of negotiated settlement, the dates contained herein may be modified.

ORDER

THE COMMISSION THEREFORE ORDERS that the procedural schedule and general provisions as set forth herein shall be adhered to by and between the parties to this Cause and the same shall become the order of the Commission.

THIS ORDER SHALL BE EFFECTIVE immediately.

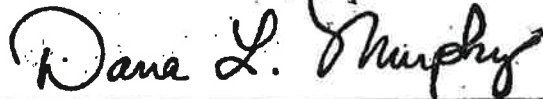
OKLAHOMA CORPORATION COMMISSION



J. TODD HIATT, Chairman



BOB ANTHONY, Vice Chairman



DANA L. MURPHY, Commissioner

CERTIFICATION


DONE AND PERFORMED by the Commissioners participating in the making of this Order, as shown by their signatures above, this 8 day of May, 2019.

[seal]


PEGGY MITCHELL, Secretary

REPORT OF THE ADMINISTRATIVE LAW JUDGE

The foregoing findings, conclusions and order are the report and recommendation of the undersigned Administrative Law Judge.


MARY CANDLER
Administrative Law Judge

4/29/19
Date

ATTACHMENT F

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Dwight D. Keen, Chair
 Shari Feist Albrecht
 Jay Scott Emler

In the Matter of the Application for Wisper ISP)
Inc. For Designation as an Eligible)
Telecommunications Carrier for Purposes of) Docket No. 19-WIIZ-225-ETC
Receiving Federal Universal Service Support)
From the FCC Connect America Fund - Phase II.)

ORDER GRANTING ELIGIBLE TELECOMMUNICATIONS CARRIER STATUS

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and determination. Having examined its files and record, and being duly advised in the premises, the Commission finds and concludes as follows:

I. BACKGROUND

1. On December 7, 2018, Wisper ISP Inc. (Wisper) filed an Application requesting designation as an Eligible Telecommunications Carrier (ETC) under Section 214(e)(2) of the Telecommunications Act of 1996 and Federal Communications Commission (FCC) Rule 54.201.¹ Wisper amended its Application on December 19, 2018. Specifically, Wisper seeks ETC status to be able to participate in the high-cost program within the federal universal service fund as a result of the reverse auction (Auction 903) process conducted by the FCC to provide support under the Connect America Fund (CAF), Phase II (Phase II), to receive support in the rendition of voice and broadband service in unserved high-cost areas in Kansas. Wisper was awarded \$1,607,524.30 for 414 locations under Phase II for certain census blocks located in the rural parts of Anderson,

¹ 47 U.S.C. § 214 (e) (1) and 47 C.F.R. § 54.201.

Bourbon, Cherokee, Crawford, Johnson, Labette, Linn, Miami and Montgomery counties and requests ETC designation for the census blocks identified in Revised Exhibit B of its Application filed on December 19, 2018.² The census blocks in which Wisper was designated to receive support by the FCC are located in the service areas of United Telephone Companies of Kansas d/b/a CenturyLink (CenturyLink), Southwestern Bell Telephone Company d/b/a AT&T Kansas (AT&T Kansas), and Consolidated Communications of Missouri Company (Consolidated Missouri).³ Wisper's selected bid offering was presented to provide 25 Mbps broadband download and 3 Mbps upload with low latency and voice services in 196 census blocks.

2. On January 29, 2019, the Commission Staff (Staff) submitted its Report and Recommendation dated January 25, 2019, which is attached and incorporated by reference, advising the Commission to grant Wisper's Application and designate it as an ETC for the purpose of participating in the high-cost federal universal service fund within the census blocks identified as part of its revised Application and in conjunction with the Phase II auction held by the FCC from July 24, 2018 to August 21, 2018.⁴

II. DISCUSSION AND ANALYSIS

3. The FCC transformed its high-cost program for universal service with an order and rulemaking that changed intercarrier compensation and targeted support in rural, insular and high-cost areas to encourage the deployment of networks capable of providing broadband services.⁵ As part of this process, the FCC created the Connect America Fund.⁶ The Phase II reverse auction

² Revised Application at 1-2 and Revised Exhibit B.

³ Staff Report and Recommendation January 25, 2019 at 1 (Staff R&R).

⁴ Staff R&R at 10.

⁵ See Connect America Fund et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17692-94, 17695, paras. 77-83, 86 (2011) (USF/ICC Transformation Order and/or FNPRM), *aff'd sub nom. In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014) (defining "voice telephony service" as the supported service and requiring Connect America Fund support recipients to offer broadband as a condition of receiving support).

⁶ USF/ICC Transformation Order, 26 FCC Rcd at 17710, para. 123.

process was designed to award high-cost support up to \$1.98 billion in areas where incumbent price cap carriers had declined to provide a combination of voice and broadband service in high-cost areas of the country.⁷ As part of the Phase II process, it was required by a successful bidding telecommunications carrier to obtain ETC certification to be able to receive high-cost universal service support.⁸

4. The Staff Report and Recommendation provides an excellent summary of the Phase II auction process and describes the FCC's federal universal service reforms, which were designed to modernize telecommunication networks by bringing broadband to unserved areas, supporting advanced mobile and broadband networks in rural, insular and high-cost areas and expanding fixed broadband networks.⁹ The Staff notes the FCC awarded \$1.49 billion in high-cost support to 103 winning bidders to provide fixed broadband and voice services to over 700,000 locations in 45 states.¹⁰ Staff discusses the deployment schedule for Phase II recipients with 100% of the locations receiving broadband and voice services within 6 years, while 40% are to be in place by the third year and 20% each year thereafter.¹¹ Staff also sets forth the reporting, certification and data requirements to be filed with the Universal Service Administrative Company on an annual basis as part of the Phase II process.¹² Staff furthermore discusses the financial and letter of credit requirements to assure compliance with the bid proposals and their implementation.¹³

5. Under Section 214(e)(2) of the Federal Telecommunications Act of 1996 (Act), states possess primary authority for designating ETC status. Section 214(e)(2) states:

⁷ See, USF/ICC Transformation Order and FNPRM, 26 FCC Rcd at 17732, 18085-108, paras. 178, 1189-1295.

⁸ Connect America Fund et al., Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5999, paras 141 et seq. (2016) (Phase II Auction Order and/or FNPRM).

⁹ Staff R&R at 2-3.

¹⁰ Id. at 2.

¹¹ Id.

¹² Id. at 2-3.

¹³ Id.

A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.¹⁴

To be an ETC for federal support purposes, a telecommunications carrier must meet the requirements set forth in Section 214(e)(1) of the Act, unless those requirements have been subject to forbearance by the FCC. Section 214(e)(1) requirements have been applied consistently since the inception of the Act and appear as follows:

A common carrier designated as an eligible telecommunications carrier ... shall be eligible to receive universal service support in accordance with section 254 ... and shall, throughout the service area for which the designation is received--

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c) of this title, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefor using media of general distribution.¹⁵

Universal Service is defined to be an evolving level of telecommunications services as defined by the FCC, "taking into account advances in telecommunications and information technologies and services." Universal Service is further defined to permit access to advanced telecommunications and information services in rural and high cost areas, as set forth in Section 254(b)(3), which states:

Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to

¹⁴ 47 U.S.C. § 214 (e) (2).

¹⁵ 47 U.S.C. § 214 (e) (1).

those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.¹⁶

Services supported by Universal Service in rural, insular and high-cost areas are set forth in FCC

Rule 54.101, which states:

(a) Services designated for support. Voice telephony services and broadband service shall be supported by federal universal service support mechanisms.

(1) Eligible voice telephony services must provide voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems; and toll limitation services to qualifying low-income consumers as provided in subpart E of this part.

(2) Eligible broadband Internet access services must provide the capability to transmit data to and receive data by wire or radio from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up service.¹⁷

6. Based on these legal principles, the Commission now discusses Wisper's ETC

Application and the supporting Staff Report and Recommendation.

Service or Functionalities

In the Application, Wisper indicates it will provide the supported services under the CAF

Phase II universal service programs. Staff summarizes the services Wisper will offer as follows:

Voice-grade access to the public switched network – Wisper will provide voice-grade access to the PSTN by providing interconnected VoIP service throughout its designated service area. Its VoIP platform runs on a Linux Operating system with proprietary software. The system allows Wisper to deploy full-featured end-user services in a scalable, fault-tolerant and resilient way. The services to be provided include monitoring systems to support monitoring, statistics and reports that provide real-time data on performance, traffic statistics, usage and other features.

¹⁶ 47 U.S.C. § 254 (b) (3).

¹⁷ 47 C.F.R. § 54.101.

Local usage – Wisper will meet the local usage requirement by including local usage in its rate plans. The Company will comply with any minimum local usage requirements adopted by the FCC or this Commission. It also indicated in response to an information request that it would allow unlimited local calling and unlimited domestic calling in the continental United States.

Access to emergency services – Wisper will provide access to emergency services by providing 911 and E911 for all of its customers to the extent that the local governments in its designated service areas have implemented 911 and E911.

Toll limitations for qualifying low-income consumers – Wisper does not distinguish between toll and non-toll for its voice offering. To the extent Wisper offers a service that distinguishes between toll and non-toll calls, it will offer toll limitation to qualifying low-income consumers at no additional charge.

Broadband Internet Access Services – Pursuant to 47 C.F.R. 54.101(a)(2), Wisper will provide broadband services with the capability to transmit data to and receive data by wire or radio from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up service. In the CAF Phase II auction, the FCC permitted bidders to select from among four performance tiers (for speed and data usage) and two latency tiers. For its Kansas Census Blocks, Wisper committed to offer 25 Mbps download and 3 Mbps upload. In all designated Census Blocks, Wisper will provide low-latency service of 100 milliseconds or better.

As a result of this analysis, Staff concludes Wisper will be able to provide the service and functionalities required by the federal universal support system, consistent with the requirements set forth in Rule 54.101(a).¹⁸

FCC Minimum Service Offering Requirements

7. As noted, Section 254(b)(3) of the Act requires reasonably comparable telecommunications and information services in high cost areas with those of urban areas. Staff's Report and Recommendation indicates there are reasonably comparable services being provided by Wisper with those existing in urban areas. ETCs must certify to the FCC that pricing for basic residential service must be within two standard deviations of the national urban monthly rate of

¹⁸ Staff R&R at 5.

\$25.50. Wisper offers a monthly rate of \$25.00 for voice with a broadband subscription and \$30.00 without broadband that will permit free nationwide and local calling, Call Waiting, Caller ID, Call Forwarding, Call Transfer, and Voicemail. Wisper also offers a mobile application and phone for additional charges. This compares with monthly residential access line ranges of between \$15.00 and \$29.00 in the designated census blocks for the various Incumbent Local Exchange Carriers (ILECs) serving in the exchanges covered by the Application with calling limited to the local exchange. Because Wisper provides expanded nationwide calling for the basic residential rate, Staff maintains that Wisper customers will have reasonably comparable voice service when compared to other Kansas households within the ILEC exchanges.¹⁹

8. With respect to broadband services, the urban benchmark rate is \$85.54 for 4Mbps/1Mbps and \$217.43 for 1,000Mbps/100Mbps. This compares to the Wisper rate of \$84.99 per month for 25Mbps/3Mbps and \$114.95 for a bundle of voice and broadband, which is well within the national benchmark and consequently, according to Staff, reasonably compares to broadband rates in urban areas. Additionally, consistent with FCC rules, Wisper offers to Lifeline-eligible customers one federal Lifeline discount per-household, which may be applied to the low-income consumer's voice service, broadband service, or a bundle of broadband and voice services. Accordingly, Staff has found that Wisper's voice and broadband service offerings all meet or exceed the FCC's minimum standards.

Types of Facilities Used

9. According to Staff, Wisper utilizes Voice over Internet Protocol (VoIP) technology throughout its designated service areas to provide voice telephony, including E911, online interface for account management and voicemail-to-email functionality. Wisper uses a wireless

¹⁹ Id at 6.

ring network with fixed base stations (access nodes) running at the 1+0 and/or 4+0 on licensed 11 GHz or 5 GHz spectrum. The system includes fiber and/or fixed wireless for interconnections (backhaul) and fixed wireless for last-mile service. Wisper will provide broadband Internet access service through a radio at a central tower.

Service Areas

10. Section 214(e)(1) of the Act requires an ETC to offer supported services throughout the service area where a designation is made by a state commission. The relevant service area under Section 214(e)(5) is the geographic area established by the Commission for universal service support or in the case of a rural carrier, the company's study area unless otherwise established by the FCC taking into account any recommendations made by the Federal-State Joint Board. However, for purposes of CAF Phase II, the FCC indicated the relevant areas for eligibility in the competitive bidding process would be at a minimum the census block.²⁰ Accordingly, the FCC determined the statutory definition of a service area should not apply and would forebear application in favor of the census block as the relevant geographic designation for establishing service areas for universal service support.²¹ The Wisper Application therefore is based on the census block as the service area for the purpose of ETC designation.²²

11. As part of its application, Wisper seeks eligibility status in 196 census blocks awarded by the FCC in Auction 903, and those areas are provided in revised Exhibit B of the Application²³ and are set forth in Attachment 1 of the Staff Report and Recommendation. As noted by the Staff, the census blocks awarded to Wisper are located in AT&T, CenturyLink and

²⁰ Connect America et al., Report and Order and Further Notice of Proposed Rulemaking, May 26, 2016, ¶ 61, "Phase II Auction Order".

²¹ Phase II Auction Order at ¶¶ 157-168.

²² Revised Application at 10.

²³ Id. at Revised Exhibit B.

Consolidated Missouri exchanges. The census blocks awarded to Wisper are located in the Drexel Missouri exchange served by Consolidated Missouri; the Altamont, Baxter Springs, Blue Mound, Bucyrus, Fontana, Galena, Greeley, Lane, Mapleton, Mound City, Mound Valley, Osawatomie, Oswego, Parker, Scammon, and Spring Hill exchanges served by CenturyLink; and the Cherryvale, Chetopa, Coffeyville, Fort Scott, Kansas City-Melrose Zone, Parsons, Pittsburg, and Treece exchanges served by AT&T. Because the FCC forbore requiring the service areas of an ETC for CAF Phase II to conform to rural telephone company service exchanges and eliminated the need for redefinition of any rural telephone company areas in the context of CAF Phase II competitive bidding process, the Commission finds the use of the census block as a basis for establishing ETC service areas when reviewing applications under the CAF Phase II program is appropriate and rural exchange or wire centers should not be the basis for reviewing CAF Phase II ETC applications. Based on the Staff review, the Commission also finds it appropriate to consider ETC designation based on the census blocks identified in revised Exhibit B of the Application.²⁴

Advertising

12. ETCs are required to advertise the availability of services supported by universal service and the charges to be assessed throughout their designated service areas under Section 214(e)(1) of the Act. Wisper indicates it will advertise the availability of service through newspaper and radio. The Staff has reviewed the language Wisper proposes to use in advertising its services and has approved the content.²⁵ The language Wisper proposes to use in its advertising also conforms to requirements set forth by the Commission in Docket No. 06-GIMT-446-GIT and includes contact information for the Office of Public Affairs and Consumer Protection in the event

²⁴ Staff R&R at 9.

²⁵ Id.

customers need to ask questions about the service or register complaints.²⁶ Accordingly, the Commission finds Wisper will satisfy the advertising requirements set forth in Section 214(e)(1) of the Act.

Public Interest

13. The Commission is authorized to designate a carrier an ETC consistent with the public interest, convenience and necessity as set forth in Section 214(e)(2) of the Act. The Wisper Application seeks authority for ETC status in the service territories of two price cap carriers and a rural independent local exchange company. In conjunction with ETC designations, the Commission has utilized certain principles highlighted by the FCC in its *Virginia Cellular Order* as a basis for determining whether multiple ETC designations are in the public interest for a particular service area.²⁷

14. Wisper has provided several factors for the Commission to consider in determining whether its Application is in the public interest. They are:

Benefits of Increased Competitive Choice – By FCC rule, a census block was only available for the Phase II 903 Auction if no unsubsidized competitor was serving in the block. Designation of Wisper as an ETC will promote increased competitive choice, thereby increasing innovation and incenting other carriers to improve their existing networks in order to remain competitive. This will result in greater access to high-speed broadband and voice services, as well as improved service quality for residents of underserved communities in rural areas of Kansas. Wisper's services will provide consumers with additional choices in communications service providers, as well as a variety of service offerings at competitive rates.

Impact of Multiple Designations on the Universal Service Fund – This application will have a negligible, if any, impact on the Universal Service Fund. Wisper will be focused on building the network required to serve customers in its

²⁶ Id.

²⁷ See In the Matter of Federal State Joint Board on Universal Service: Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia, Rel. January 22, 2004 ("Virginia Cellular Order"), FCC Docket No. DA 03-338; and see also, Order in Docket No. 04-ALKT-283-ETC, September 24, 2004, and Order in Docket No. 04-RCCT-338-ETC, September 30, 2004.

CAF II funding areas. All funding shall come from the Connect America Fund that has already been established.

Unique Advantages and Disadvantages of the Competitor's Service Offering – Wisper will use federal universal fund support to expand access to high-speed, high-quality broadband and voice provided through interconnected VoIP for residents of rural Kansas. Wisper will provide state of the art communications services to the coverage areas required by the CAF II award and then organically grow that network to deliver the services to more parts of the state.

Commitments Made Regarding High-quality Telecommunications Services By Company – Wisper will provide state of the art communications services to the coverage areas required by the CAF II award and then organically grow that network to deliver the services to more parts of the state.

Competitive ETC's Ability to Provide the Support Services Throughout the Designated Service Area Within a Reasonable Time Frame - CAF II financing will allow Wisper to deliver its services to rural eastern Kansas. Given the strict rules associated with that funding, Wisper must move quickly to build its network – 40% of its coverage area in 3 years and 100% in six. Wisper has grown dramatically since its inception so it is both well versed in expansion strategies and has the necessary funding to build expeditiously.

After reviewing the Application with the benefit of information requests and considering the public interest factors set forth above, the Staff concludes that designating Wisper an ETC as a result of the CAF Phase II Auction is in the public interest for the 196 census blocks identified in this docket.

III. FINDINGS AND CONCLUSIONS

15. The Commission adopts the Staff's Report and Recommendation of January 25, 2019, and its analysis in support of the Wisper Application for ETC status. The application is a product of the FCC CAF Phase II reverse auction and seeks ETC designation in order to participate in the high-cost program within the federal universal service fund. It proposes to deploy voice and broadband-capable networks in rural, high-cost areas under the Phase II Auction. The Application meets the requirements of Section 214(e)(1) and is consistent with the public interest, convenience and necessity.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The Wisper ISP Inc. Revised Application filed in this matter on December 19, 2018, is hereby granted and Wisper ISP Inc. is designated as an Eligible Telecommunications Carrier in the 196 census blocks identified in its Application for the purpose of qualifying for the high cost fund within the federal universal service program, and in conformity with the Connect America Fund Phase II Auction. The designated service area for the purpose of this order is identified as Attachment 1 to the Staff Report and Recommendation of January 25, 2019, which is incorporated as part of the Order.

B. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529 (a) (1).²⁸

C. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order, or orders, as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Keen, Chair; Albrecht, Commissioner; Emler, Commissioner

Dated: 02/14/2019



Lynn M. Retz
Secretary to the Commission

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²⁸ K.S.A. 66-118b; K.S.A. 77-503 (c) and K.S.A. 77-531(b).

REPORT AND RECOMMENDATION UTILITIES DIVISION

TO: Chair Dwight D. Keen
Commissioner Jay Scott Emler
Commissioner Shari Feist Albrecht

FROM: Christine Aarnes, Chief of Telecommunications & SPP Affairs
Jeff McClanahan, Director of Utilities

DATE: January 25, 2019

SUBJECT: 19-WIIZ-225-ETC
In the Matter of the Application for Wisper ISP Inc. For Designation as an Eligible Telecommunications Carrier for Purposes of Receiving Federal Universal Service Support From the FCC Connect America Fund - Phase II.

EXECUTIVE SUMMARY:

Wisper ISP Inc. (Wisper) filed an Application for designation as an Eligible Telecommunications Carrier (ETC) in order to be eligible to receive support from the Connect America Fund (CAF) Phase II Auction (Auction 903) for 196 census blocks in the state of Kansas.¹ Specifically, Wisper was awarded \$1,607,524.30 total for Kansas, to be received over ten years, to provide broadband at 25 Megabits per second (Mbps) download and 3 Mbps upload with low-latency service of 100 milliseconds or better to 414 locations in specific areas in Kansas.²

Staff recommends approval of Wisper's request to be designated an ETC in the requested census blocks listed in Exhibit B to its Revised Application in United Telephone Companies of Kansas d/b/a CenturyLink (CenturyLink), Southwestern Bell Telephone Company d/b/a AT&T Kansas (AT&T), and Consolidated Communications of Missouri Company (Consolidated MO) service areas. For the Commission's convenience, a listing of the requested census blocks awarded to Wisper and the associated incumbent local exchange carriers (ILECs) and exchanges is attached to this Report and Recommendation as Staff Attachment 1.

¹ Initial Application filed on December 7, 2018, requested ETC designation in 51 census blocks. On December 19, 2018, Wisper filed a Revised Application correcting the error by seeking ETC designation in the 196 awarded census blocks.

² *Connect America Fund Phase II Auction (903) Closes Winning Bidders Announced FCC Form 683 Due October 15, 2018*, WC Docket No. 10-90, DA 18-887 (August 28, 2018), Attachment A.

BACKGROUND:

Wisper is an Illinois for profit corporation, headquartered in Mascoutah, Illinois. Wisper is registered with the Kansas Secretary of State's Office with a status of "Active and in Good Standing." Wisper does not have a Certificate of Convenience and Authority; nor is one required as Wisper provides telecommunications services via Voice over Internet Protocol (VoIP) technology. The Company has registered with the Kansas Universal Service Fund (KUSF) third-party administrator, GVNW Consulting, Inc., but has not yet remitted any forms or paid any KUSF assessments because Wisper states it is not yet operating in Kansas.

Connect America Fund Phase II

In 2011, the Federal Communications Commission (FCC) comprehensively reformed and began the modernization of the federal universal service and intercarrier compensation systems to ensure that robust, affordable voice and broadband service, both fixed and mobile, are available to Americans nationwide. Part of the reform was to establish a CAF to bring broadband to unserved areas; support advanced mobile voice and broadband networks in rural, insular and high-cost areas; and expand fixed broadband.³

CAF Phase II (Phase II) is part of the FCC's reform and modernization of its universal service support programs. The FCC conducted Auction 903 to allocate Phase II support to certain eligible areas across the United States. Auction 903 ran from July 24, 2018, to August 21, 2018. The FCC awarded a total of \$1.488 billion for 10 years to 103 winning bidders to provide fixed broadband and voice services to over 700,000 locations in 45 states.

Phase II support recipients must offer commercially at least one voice and one broadband service meeting the relevant service requirements to the required number of locations in the following timeframe:

- 40% of the required number of locations in a state by the end of the third year of support;
- An additional 20% in each subsequent year; and
- 100% deployment by the end of the sixth year of support.

Phase II Auction support recipients are also required to file with the Universal Service Administrative Company (USAC) annual reports and build-out milestone certifications, as well as data on the locations where service is available. Failure to meet the terms and conditions of support can result in increased reporting obligations and possible withholding and/or recovery of support.

Winning bidders are also required to provide the FCC with audited financials and obtain an irrevocable letter of credit from an eligible bank to cover the annual amount of support to be received prior to receiving any Phase II support. The FCC requires the letter of credit to remain open until the Phase II auction recipient has certified that it has deployed broadband and voice services meeting the FCC's requirements to 100% of the required number of locations and USAC has validated that the entity has fully deployed its network. Failure to meet the required milestones

³ See FCC Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, released November 18, 2011.

can result in the FCC issuing a letter evidencing the failure and declaring default. Phase II auction recipients are allowed to reduce the value of their letter of credit to 60% of the total support already disbursed plus the amount of support that will be disbursed in the coming year once it has been verified that the Phase II auction recipient has met the 80% service milestone.⁴

Bids were accepted for four services tiers, each with varying speed (10 Mbps to 1 Gbps) and usage allowances, and two latency tiers, one high latency and one low latency. For the census blocks awarded to Wisper in Kansas, Wisper committed to provide broadband at the “baseline” service tier of 25 Mbps/3 Mbps, with low latency.

On August 23, 2018, the FCC announced the winners of Auction 903, which included the total assigned support to Wisper of \$1,607,524.30 to be received over ten years for 414 locations in Kansas. Wisper was the winning bidder in six states (Arkansas, Illinois, Indiana, Kansas, Missouri, and Oklahoma) for a total of \$220,319,375. Specifically, the CAF II funding areas awarded to Wisper in Kansas are in census blocks located in Anderson, Bourbon, Cherokee, Crawford, Johnson, Labette, Linn, Miami, and Montgomery counties in Eastern Kansas.

ANALYSIS:

Federal ETC Requirements

Pursuant to 47 U.S.C. § 214(e)(1), a common carrier designated as an eligible telecommunications carrier shall be eligible to receive universal service support in accordance with section 254 of the Federal Act and shall, throughout the service area for which the designation is received – (A) offer the services that are supported by Federal universal service support mechanism under section 254(c) of the Federal Act, either using its own facilities or a combination of its own facilities and resale of another carrier’s service (including the services offered by another eligible telecommunications carrier); and (B) advertise the availability of such service and the charges therefore using media of general distribution.⁵

Congress empowers the states to designate a common carrier as an ETC. Pursuant to 47 U.S.C. § 214(e)(2), “[u]pon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission.”

In order to be designated as an ETC, a company must be a “common carrier” as defined in 47 U.S.C. § 153(11). The term “common carrier” or “carrier” means any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or interstate or foreign radio transmission of energy; but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier.

Wisper states in its response to Staff Request for Information (RFI) 8 that, for the areas that Wisper is seeking ETC designation in Kansas, it will provide broadband and voice services to the public on a non-discriminatory basis. As such, Wisper will be a “common carrier” as required by 47

⁴ See FCC Order on Reconsideration, FCC 18-5, released January 31, 2018.

⁵ 47 U.S.C. § 254.

C.F.R. § 54.201(b) as it will offer communications services by wire for “hire” and transmit communications both interstate and intrastate. Moreover, in Docket No. 19-WIIZ-280-COC, Wisper currently has pending an Application for a Certificate to serve as a telecommunications service provider in the non-rural areas of Kansas. Staff is satisfied that Wisper meets the common carrier requirement.

1. Service or Functionalities

The FCC identifies the services or functionalities that shall be supported by the federal universal service support mechanisms, pursuant to 47 U.S.C. § 254(c). The services designated for support are codified in 47 C.F.R. § 54.101(a),

(1) Eligible voice telephony services must provide voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems; and toll limitation services to qualifying low-income consumers as provided in subpart E of this part.

(2) Eligible broadband Internet access services must provide the capability to transmit data to and receive data by wire or radio from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up service.

In its Application, Wisper provided the following explanations of how it proposes to provide the services designated for support.

Voice-grade access to the public switched network – In its USF/ICC Transformation Order, the FCC modified the definition of a supported service to a technologically neutral approach, allowing companies to provision voice service over any platform, including the PSTN and IP networks. Thus, the FCC amended Section 54.101 to specify that the functionalities of eligible voice telephony services include voice grade access to the public switched network or its functional equivalent. The FCC further explained that increasingly “consumers are obtaining voice services not through traditional means but instead through interconnected VoIP providers offering service over broadband networks.” Interconnected VoIP services “allow customers to make real-time voice calls to, and receive calls from, the PSTN, and increasingly appear to be viewed by consumers as substitutes for traditional voice telephone services.” Thus, the FCC concluded that its authority to promote universal services in this context “does not depend on whether interconnected VoIP services are telecommunications services or information services under the Communications Act.” Wisper will therefore provide voice-grade access to the PSTN by providing interconnected VoIP service throughout the designated service area. Its VoIP platform runs on a Linux Operating system with proprietary software. The system allows Wisper to deploy full-featured end-user services in a scalable, fault-tolerant and resilient way. The services to be provided include monitoring systems to support monitoring, statistics and reports that provide real-time data on performance, traffic statistics, usage and other features.

Local usage – “Local usage” means an amount of minutes of use of exchange services, prescribed by the FCC, provided free of charge to end users.” The FCC has not specified a minimum amount of local usage that an ETC must offer. Wisper will meet the local usage requirement by including local usage in its rate plans. The Company will comply with any minimum local usage requirements adopted by the FCC or this Commission.

Access to emergency services – ETCs are required to provide access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911 (“E911”), to the extent the local government in an ETC's service area has implemented 911 or enhanced 911 systems. Wisper will provide access to emergency services by providing 911 and E911 for all of its customers to the extent that the local governments in its designated service areas have implemented 911 and E911.

Toll limitations for qualifying low-income consumers – Wisper does not distinguish between toll and non-toll for its voice offering. To the extent Wisper offers a service that distinguishes between toll and non-toll calls, it will offer toll limitation to qualifying low-income consumers at no additional charge.

Broadband Internet Access Services – Pursuant to 47 C.F.R. 54.101(a)(2), Wisper will provide broadband services with the capability to transmit data to and receive data by wire or radio from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up service.

In the CAF Phase II auction, the FCC permitted bidders to select from among four performance tiers (for speed and data usage) and two latency tiers. For its Kansas Census Blocks, Wisper committed to offer 25 Mbps download and 3 Mbps upload. In all designated Census Blocks, Wisper will provide low-latency service of 100 milliseconds or better.

With regard to local usage, Wisper stated in response to RFI 3, that all of its calling packages in Kansas will allow for unlimited local calling and unlimited domestic calling in the continental United States.

Staff is satisfied that Wisper has demonstrated an ability to provide the service or functionalities supported by the federal universal service support systems.

2. FCC Minimum Service Offering Requirements

The FCC requires all ETCs, including competitive ETCs providing fixed voice services, to certify to the FCC on Form 481, no later than July 1 of each year, that the pricing of its basic residential voice services is no more than two standard deviations above the urban average monthly rate. The 2018 urban average monthly rate is \$25.50. Therefore, the reasonable comparability benchmark for voice services is currently \$45.38.⁶

⁶ FCC Public Notice, DA 17-1093, Released November 8, 2017.

In its Application, Wisper states it will offer residential digital voice service at a rate of \$25.00 for those customers that also subscribe to Wisper broadband and \$30 for those without Wisper broadband service. Wisper's calling plan includes unlimited local calling, Call Waiting, Caller ID, Call Forwarding, Call Transfer, Voicemail, and free long distance in the United States. The customer can use its own VoIP-enabled phone, pay an additional fee to use Wisper's mobile application, or purchase a phone from Wisper. Lifeline customers will receive all of the same features as a non-Lifeline customer and will receive the federal Lifeline credit of \$9.25, which reduces the low-income consumer's rate by the same amount. Wisper's pricing of its basic residential voice service of \$25 or \$30 are within the reasonable comparability benchmark.

With regard to the incumbent providers for the requested areas, the monthly rate for a residential access line is \$29.00 in the AT&T exchanges, \$19.48 in the CenturyLink exchanges, and \$15 in the Consolidated MO exchange. The local calling scope is the exchange, but local calls are unlimited. As Wisper offers unlimited local (and nationwide) calling, Staff believes the local usage offered by Wisper is clearly comparable to the ILECs' service offerings.

With regard to broadband services, the FCC's 2018 urban rate benchmarks range from \$85.54 for 4 Mbps/1 Mbps broadband service to \$217.43 for 1,000 Mbps/100 Mbps. Wisper's broadband service rates start at \$59.99 per month for 10 Mbps/2 Mbps speed, \$84.99 for 15 Mbps/3 Mbps, and \$99.99 for 20 Mbps/4 Mbps.

The FCC further requires ETCs to meet the minimum speed and usage allowances for Lifeline-supported services to ensure Lifeline consumers have access to the same level of services subscribed to by a substantial majority of American consumers. Therefore, beginning December 1, 2018, the Lifeline minimum service standards for fixed broadband data usage is 1,000 Gigabytes (GB) per month and the speed must be at least 18 Mbps/2 Mbps.⁷

Wisper's voice and broadband service offerings all meet or exceed the FCC's minimum standards. Consistent with FCC rules, Wisper offers to Lifeline-eligible customers one federal Lifeline discount per-household, which may be applied to the low-income consumer's voice service, broadband service, or a bundle of broadband and voice telephony service.⁸

Wisper stated in its Application that it would require Lifeline applicants to include a copy of their SNAP card, Medicaid card, etc. as proof of eligibility in the various social programs. Not all beneficiary cards include the recipient's name, which is required to prove eligibility for Lifeline. Therefore, Wisper needs to ensure that it requests an award letter from the local state agency to verify participation when the beneficiary card does not include the recipient's name. Wisper states that it is familiar with USAC's National Verified Acceptable Documentation Guidelines for Lifeline service and agrees to abide by the guidelines, which includes the requirement to request additional proof of eligibility documentation. Furthermore, Wisper is familiar with the subscriber eligibility determination and certification requirements contained in 47 C.F.R. §54.410 and agrees to comply with the requirements.⁹

⁷ FCC Public Notice, DA 18-739, Released July 18, 2018.

⁸ 47 C.F.R. §54.401(b) and Wisper Application.

⁹ Wisper response to RFI 5.

3. Type of Facilities Used to Provide Service

Wisper utilizes a wireless ring network with fixed base stations (access nodes) running at the 1+0 and/or 4+0 on the licensed 11 GHz or 5 GHz spectrum. According to the Application, this network will have a 99.99% uptime and availability due to its ring structure. The technologies include fiber and/or fixed wireless (11 GHz or 5 GHz) for interconnection (backhaul) and fixed wireless for last-mile service.

Wisper will provide voice services through a hosted VoIP on premise server solution. The service includes E911, an online interface for account management, and voicemail-to-email functionality.

Wisper will provide broadband Internet access service through an antenna installed on the customer premise that will connect through a radio at a central tower. The tower either will connect directly to the Internet via fiber or will connect to another fiber-fed tower via fixed wireless technology.

4. Service Areas

As required by 47 U.S.C. § 214(e)(1), an ETC must offer the supported services throughout the service area for which the designation is received. Section 214(e)(5) of the Federal Act defines “service area” as:

The term “service area” means a geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, “service area” means such company’s “study area” unless and until the [Federal Communications] Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.

The census blocks awarded to Wisper are in exchanges served by AT&T, CenturyLink, and Consolidated MO. Pursuant to 47 U.S.C. §214(e)(1), an ETC must offer the supported services throughout the service area for which designation is received, which is typically, the entire exchange or study area of the incumbent local exchange carrier. However, the FCC forbore from requiring the service areas of an ETC for CAF Phase II to conform to the service area of any rural telephone company and eliminated the need for redefinition of any rural telephone company areas in the context of CAF Phase II competitive bidding.¹⁰ Furthermore, in its *Phase II Auction Order*, the FCC concluded that eligibility of areas for support in the Phase II competitive bidding process would be determined at the census block level.¹¹ Specifically, the FCC stated:

For purposes of ongoing monitoring and oversight by the Commission, the relevant state commission, and the Tribal government, where applicable, we now conclude that it is preferable to require a winning bidder to serve all of the locations in a given census block, rather than some subset of those locations in a given block that

¹⁰ *In the Matter of Connect America Fund*, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, Rel. May 26, 2016, ¶¶157-168.

¹¹ *Connect America et al.*, Report and Order and Further Notice of Proposed Rulemaking, May 26, 2016, ¶ 61, “*Phase II Auction Order*”.

are served by a given node to the extent possible. As a practical matter, bidders (and ultimate awardees of funding) may not know which locations in a given block are “funded” and therefore must be served, and which are not “funded” and do not have to be served. Accordingly, to simplify this issue for all parties concerned, we direct the Bureau to determine which census blocks are eligible by averaging costs at the census block level, to the extent possible, so that if a given census block is eligible for funding, the deployment obligation applies to all the locations in that census block.¹²

This Commission has previously determined that the “service area” for non-rural telephone companies is the exchange or wire center and the study area for rural telephone company areas, unless redefinition has occurred. As discussed, however, for CAF Phase II bidding purposes, the FCC has determined that the service area should be more granular than an exchange or wire center and should instead be the census block. Thus, for CAF II bidding purposes, the service area is the census block rather than the exchange or wire center and redefinition is not necessary.

Wisper requests ETC designation in the 196 census blocks awarded to it in Auction 903, which are listed in Exhibit B to its Revised Application. The census blocks awarded to Wisper are located in the Drexel MO exchange served by Consolidated MO; the Altamont, Baxter Springs, Blue Mound, Bucyrus, Fontana, Galena, Greeley, Lane, Mapleton, Mound City, Mound Valley, Osawatomie, Oswego, Parker, Scammon, and Spring Hill exchanges served by CenturyLink; and the Cherryvale, Chetopa, Coffeyville, Fort Scott, Kansas City-Melrose Zone, Parsons, Pittsburg, and Treece exchanges served by AT&T. As discussed above, Wisper is required to provide the supported services throughout each awarded census block.

Successful auction bidders are required by the FCC to provide it with documentation of high-cost ETC designation for all the eligible census blocks in a winning bid by 6:00pm ET on February 25, 2019.¹³

5. Advertising

As discussed previously, Section 214(e)(1) requires ETCs to advertise the availability of the supported services and charges throughout the designated service area using media of general distribution.

Wisper states it will advertise the availability of the supported services throughout its designated service areas using media of general distribution in a manner designed to reach those likely to qualify for such services. Specifically, the methods of advertising will include newspaper and radio advertisements.

Wisper further agrees to comply with all form and content requirements promulgated by the FCC and the KCC in the future, including the FCC requirement to disclose that the service is non-transferrable, is available only to eligible consumers, and limited to one discount per economic household.

¹² Id. at ¶ 65.

¹³ Public Notice DA 18-887, released August 28, 2018.

In its October 2, 2006 Order in Docket No. 06-GIMT-446-GIT, the Commission required competitive ETCs to develop “meaningful language so that consumers will understand what they can expect from an ETC”. Furthermore, competitive ETCs shall include contact information for the Commission’s Office of Public Affairs and Consumer Protection (PACP) in its advertisements to make sure that customers know where to turn with questions and complaints.

In response to RFI 6(c), Wisper provided Staff with the following advertising language it intends to use in its designated ETC service area:

Wisper will provide Lifeline service throughout its service territory. To learn more about the Lifeline program and discounts you may be eligible to receive, visit our Lifeline Terms and Conditions page available at www.WisperISP.com. Customers may contact the Kansas Corporation Commission’s Office of Public Affairs and Consumer Protection with any concerns at (800) 662-0027 or (785) 271-3140.

Staff is satisfied with the proposed advertising language and that Wisper will be able to comply with the advertising requirement.

6. Public Interest

Pursuant to 47 U.S.C. § 214(e)(2), the Commission must find that it is in the public interest to designate the Applicant as an ETC in the requested area. The FCC, in its Virginia Cellular Order, made new findings regarding determination of the public interest, including that designation of an additional ETC in a non-rural telephone company’s study area based merely upon a showing that the requesting carrier complies with Section 214(e)(1) of the Act is necessarily consistent with the public interest in every instance.¹⁴ While the FCC’s decision is not binding on this Commission, the Commission found in its ALLTEL and RCC Minnesota Orders that examination of the additional public interest factors enumerated in the FCC’s Order is reasonable.¹⁵

In its Application and in response to RFI 7, Wisper provided the following explanations of how it meets the guidelines that the Virginia Cellular Order suggested for evaluation:

- **Benefits of Increased Competitive Choice** – Designation of Wisper as an ETC is also in the public interest because it will promote increased competitive choice, thereby increasing innovation and incenting other carriers to improve their existing networks in order to remain competitive. This will result in greater access to high-speed broadband and voice services, as well as improved service quality for residents of underserved communities in rural areas of Kansas. Wisper’s services will provide consumers with additional choices in communications service providers, as well as a variety of service offerings at competitive rates.

¹⁴ See *In the Matter of Federal State Joint Board on Universal Service: Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia*, Rel. January 22, 2004 (“Virginia Cellular Order”), FCC Docket No. DA 03-338.

¹⁵ See September 24, 2004 Order in Docket No. 04-ALKT-283-ETC and September 30, 2004 Order, in Docket No. 04-RCCT-338-ETC.

- **Impact of Multiple Designations on the Universal Service Fund** – This application will have a negligible, if any, impact on the Universal Service Fund. Wisper will be focused on building the network required to serve customers in its CAF II funding areas. All funding shall come from the Connect America Fund that has already been established.
- **Unique Advantages and Disadvantages of the Competitor's Service Offering** – Wisper will be delivering state of the art broadband internet and affordable voice over internet protocol service to rural Kansas residents. Initial deployment will be in CAF II areas considered unserved or underserved. These areas currently have been ignored by their local providers and have little or no broadband availability and more expensive, less flexible wireline telephone service.
- **Commitments Made Regarding High-quality Telecommunications Services By Company** – Wisper will provide state of the art communications services to the coverage areas required by the CAF II award and then organically grow that network to deliver the services to more parts of the state.
- **Competitive ETC's Ability to Provide the Support Services Throughout the Designated Service Area Within a Reasonable Time Frame** – CAF II financing will allow Wisper to deliver its services to rural eastern Kansas. Given the strict rules associated with that funding, Wisper must move quickly to build its network – 40% of its coverage area in 3 years and 100% in six. Wisper has grown dramatically since its inception so it is both well versed in expansion strategies and has the necessary funding to build expeditiously.

After reviewing Wisper's Application and its responses to Staff RFIs, Staff believes that Wisper has demonstrated that it is in the public interest to designate it as an ETC in the 196 census blocks it was awarded in the FCC's Auction 903, which are attached to this Report & Recommendation as KCC Staff Attachment 1.

RECOMMENDATION:

Staff is satisfied that Wisper has demonstrated an ability to meet the federal requirements for being designated an ETC in the 196 requested census blocks, which are listed in Exhibit B to Wisper's Revised Application and Staff Attachment 1, and recommends approval of the Revised Application. Furthermore, no party has opposed Wisper's request and being designated as an ETC in the requested census blocks will serve the public interest by allowing Wisper to participate in the FCC's CAF II program and provide voice and broadband services in the requested designated area.

Wisper should be advised that CAF Phase II support received must be used for its intended purpose and the Company will be required to certify that it uses the support as intended each year. Additionally, Wisper should be aware that any decisions made by the Commission in a generic docket regarding additional ETC requirements may affect the Company and the Company may be required to follow these to continue to receive support.

BIDDER	CENSUS BLOCK	COUNTY	EXCHANGE	ILEC
Wisper ISP, Inc	200039536001450	Anderson	Parker	CenturyLink
Wisper ISP, Inc	200039537003166	Anderson	Parker	CenturyLink
Wisper ISP, Inc	200119556001233	Bourbon	Fort Scott	AT&T
Wisper ISP, Inc	200119556002103	Bourbon	Mapleton	CenturyLink
Wisper ISP, Inc	200119556002141	Bourbon	Mapleton	CenturyLink
Wisper ISP, Inc	200119556002144	Bourbon	Mapleton	CenturyLink
Wisper ISP, Inc	200119557001002	Bourbon	Fort Scott	AT&T
Wisper ISP, Inc	200119557002055	Bourbon	Fort Scott	AT&T
Wisper ISP, Inc	200119557002076	Bourbon	Fort Scott	AT&T
Wisper ISP, Inc	200119557002080	Bourbon	Fort Scott	AT&T
Wisper ISP, Inc	200119557002081	Bourbon	Fort Scott	AT&T
Wisper ISP, Inc	200119557002203	Bourbon	Fort Scott	AT&T
Wisper ISP, Inc	200119557002238	Bourbon	Fort Scott	AT&T
Wisper ISP, Inc	200119557002335	Bourbon	Fort Scott	AT&T
Wisper ISP, Inc	200119558001005	Bourbon	Fort Scott	AT&T
Wisper ISP, Inc	200119558001027	Bourbon	Fort Scott	AT&T
Wisper ISP, Inc	200119558001077	Bourbon	Fort Scott	AT&T
Wisper ISP, Inc	200119558001162	Bourbon	Fort Scott	AT&T
Wisper ISP, Inc	200119559001058	Bourbon	Fort Scott	AT&T
Wisper ISP, Inc	200119559002006	Bourbon	Fort Scott	AT&T
Wisper ISP, Inc	200119559004019	Bourbon	Fort Scott	AT&T
Wisper ISP, Inc	200219581001028	Cherokee	Scammon	CenturyLink
Wisper ISP, Inc	200219582002116	Cherokee	Treece	AT&T
Wisper ISP, Inc	200219582002118	Cherokee	Treece	AT&T
Wisper ISP, Inc	200219582002123	Cherokee	Treece	AT&T
Wisper ISP, Inc	200219582002132	Cherokee	Treece	AT&T
Wisper ISP, Inc	200219582002147	Cherokee	Treece	AT&T
Wisper ISP, Inc	200219582002150	Cherokee	Treece	AT&T
Wisper ISP, Inc	200219582002151	Cherokee	Treece	AT&T
Wisper ISP, Inc	200219582002153	Cherokee	Treece	AT&T
Wisper ISP, Inc	200219582002154	Cherokee	Treece	AT&T
Wisper ISP, Inc	200219582002155	Cherokee	Treece	AT&T
Wisper ISP, Inc	200219582002156	Cherokee	Treece	AT&T
Wisper ISP, Inc	200219582002157	Cherokee	Treece	AT&T
Wisper ISP, Inc	200219582002181	Cherokee	Treece	AT&T
Wisper ISP, Inc	200219582002183	Cherokee	Baxter Springs	CenturyLink
Wisper ISP, Inc	200219585001058	Cherokee	Galena	CenturyLink
Wisper ISP, Inc	200219585001081	Cherokee	Galena	CenturyLink
Wisper ISP, Inc	200219585002049	Cherokee	Galena	CenturyLink
Wisper ISP, Inc	200219585004019	Cherokee	Baxter Springs/Galena	CenturyLink
Wisper ISP, Inc	200219585004069	Cherokee	Galena	CenturyLink
Wisper ISP, Inc	200379569001109	Crawford	Pittsburg	AT&T

BIDDER	CENSUS BLOCK	COUNTY	EXCHANGE	ILEC
Wisper ISP, Inc	200379569001197	Crawford	Pittsburg	AT&T
Wisper ISP, Inc	200379569001229	Crawford	Pittsburg	AT&T
Wisper ISP, Inc	200379570002026	Crawford	Pittsburg	AT&T
Wisper ISP, Inc	200379572001006	Crawford	Pittsburg	AT&T
Wisper ISP, Inc	200379572001026	Crawford	Pittsburg	AT&T
Wisper ISP, Inc	200379572001035	Crawford	Pittsburg	AT&T
Wisper ISP, Inc	200379572001040	Crawford	Pittsburg	AT&T
Wisper ISP, Inc	200379573001039	Crawford	Pittsburg	AT&T
Wisper ISP, Inc	200379573001071	Crawford	Pittsburg	AT&T
Wisper ISP, Inc	200379573001077	Crawford	Pittsburg	AT&T
Wisper ISP, Inc	200379573001103	Crawford	Pittsburg	AT&T
Wisper ISP, Inc	200379573001116	Crawford	Pittsburg	AT&T
Wisper ISP, Inc	200379573001121	Crawford	Pittsburg	AT&T
Wisper ISP, Inc	200379576002019	Crawford	Pittsburg	AT&T
Wisper ISP, Inc	200379576002033	Crawford	Pittsburg	AT&T
Wisper ISP, Inc	200379576002113	Crawford	Pittsburg	AT&T
Wisper ISP, Inc	200379576002139	Crawford	Pittsburg	AT&T
Wisper ISP, Inc	200910533011005	Johnson	Kansas City - Melrose Zone	AT&T
Wisper ISP, Inc	200910538012013	Johnson	Spring Hill	CenturyLink
Wisper ISP, Inc	200910538012024	Johnson	Spring Hill	CenturyLink
Wisper ISP, Inc	200910538012107	Johnson	Spring Hill	CenturyLink
Wisper ISP, Inc	200910538041038	Johnson	Spring Hill	CenturyLink
Wisper ISP, Inc	200999505002137	Labette	Cherryvale/Mound Valley	AT&T/CenturyLink
Wisper ISP, Inc	200999505003151	Labette	Parsons	AT&T
Wisper ISP, Inc	200999505003181	Labette	Parsons	AT&T
Wisper ISP, Inc	200999505003240	Labette	Parsons	AT&T
Wisper ISP, Inc	200999505003326	Labette	Oswego	CenturyLink
Wisper ISP, Inc	200999505003381	Labette	Oswego	CenturyLink
Wisper ISP, Inc	200999505003383	Labette	Oswego	CenturyLink
Wisper ISP, Inc	200999505003393	Labette	Oswego	CenturyLink
Wisper ISP, Inc	200999505003398	Labette	Oswego	CenturyLink
Wisper ISP, Inc	200999505003399	Labette	Parsons/Oswego	AT&T/CenturyLink
Wisper ISP, Inc	200999505003433	Labette	Altamont	CenturyLink
Wisper ISP, Inc	200999505003448	Labette	Mound Valley	CenturyLink
Wisper ISP, Inc	200999505003464	Labette	Altamont	CenturyLink
Wisper ISP, Inc	200999505003466	Labette	Mound Valley	CenturyLink
Wisper ISP, Inc	200999505003493	Labette	Oswego	CenturyLink
Wisper ISP, Inc	200999505003532	Labette	Altamont	CenturyLink
Wisper ISP, Inc	200999505003561	Labette	Altamont/Mound Valley	CenturyLink
Wisper ISP, Inc	200999505004113	Labette	Altamont	CenturyLink

BIDDER	CENSUS BLOCK	COUNTY	EXCHANGE	ILEC
Wisper ISP, Inc	200999506001025	Labette	Mound Valley	CenturyLink
Wisper ISP, Inc	200999506001056	Labette	Mound Valley	CenturyLink
Wisper ISP, Inc	200999506001059	Labette	Mound Valley	CenturyLink
Wisper ISP, Inc	200999506001069	Labette	Mound Valley	CenturyLink
Wisper ISP, Inc	200999506001127	Labette	Coffeyville	AT&T
Wisper ISP, Inc	200999506001150	Labette	Coffeyville	AT&T
Wisper ISP, Inc	200999506003010	Labette	Oswego	CenturyLink
Wisper ISP, Inc	200999506003017	Labette	Altamont	CenturyLink
Wisper ISP, Inc	200999506003030	Labette	Oswego	CenturyLink
Wisper ISP, Inc	200999506003058	Labette	Mound Valley	CenturyLink
Wisper ISP, Inc	200999506003138	Labette	Altamont	CenturyLink
Wisper ISP, Inc	200999506003145	Labette	Altamont	CenturyLink
Wisper ISP, Inc	200999506003305	Labette	Altamont	CenturyLink
Wisper ISP, Inc	200999506003309	Labette	Altamont	CenturyLink
Wisper ISP, Inc	200999507003008	Labette	Oswego	CenturyLink
Wisper ISP, Inc	200999508001006	Labette	Oswego	CenturyLink
Wisper ISP, Inc	200999508001016	Labette	Oswego	CenturyLink
Wisper ISP, Inc	200999508001017	Labette	Oswego	CenturyLink
Wisper ISP, Inc	200999508001029	Labette	Chetopa	AT&T
Wisper ISP, Inc	200999508001292	Labette	Oswego	CenturyLink
Wisper ISP, Inc	201079551001031	Linn	Greeley	CenturyLink
Wisper ISP, Inc	201079551001116	Linn	Parker	CenturyLink
Wisper ISP, Inc	201079551001154	Linn	Parker	CenturyLink
Wisper ISP, Inc	201079551002026	Linn	Fontana	CenturyLink
Wisper ISP, Inc	201079551002095	Linn	Parker	CenturyLink
Wisper ISP, Inc	201079551002196	Linn	Mound City	CenturyLink
Wisper ISP, Inc	201079551005073	Linn	Mound City	CenturyLink
Wisper ISP, Inc	201079551005094	Linn	Parker	CenturyLink
Wisper ISP, Inc	201079551005099	Linn	Parker	CenturyLink
Wisper ISP, Inc	201079551005114	Linn	Parker	CenturyLink
Wisper ISP, Inc	201079551005139	Linn	Parker	CenturyLink
Wisper ISP, Inc	201079551005140	Linn	Mound City/Parker	CenturyLink
Wisper ISP, Inc	201079551005141	Linn	Parker	CenturyLink
Wisper ISP, Inc	201079551005146	Linn	Parker	CenturyLink
Wisper ISP, Inc	201079551005170	Linn	Mound City	CenturyLink
Wisper ISP, Inc	201079551005174	Linn	Mound City	CenturyLink
Wisper ISP, Inc	201079551005177	Linn	Mound City	CenturyLink
Wisper ISP, Inc	201079551005181	Linn	Parker	CenturyLink
Wisper ISP, Inc	201079551005186	Linn	Parker	CenturyLink
Wisper ISP, Inc	201079551005192	Linn	Parker	CenturyLink
Wisper ISP, Inc	201079551005210	Linn	Blue Mound/Parker	CenturyLink
Wisper ISP, Inc	201079551005359	Linn	Parker	CenturyLink
Wisper ISP, Inc	201079551005360	Linn	Mound City	CenturyLink

BIDDER	CENSUS BLOCK	COUNTY	EXCHANGE	ILEC
Wisper ISP, Inc	201079552001002	Linn	Mound City	CenturyLink
Wisper ISP, Inc	201079552001006	Linn	Mound City	CenturyLink
Wisper ISP, Inc	201079552001008	Linn	Mound City/Parker	CenturyLink
Wisper ISP, Inc	201079552001019	Linn	Blue Mound	CenturyLink
Wisper ISP, Inc	201079552001035	Linn	Blue Mound	CenturyLink
Wisper ISP, Inc	201079552001059	Linn	Blue Mound	CenturyLink
Wisper ISP, Inc	201079552001061	Linn	Mound City	CenturyLink
Wisper ISP, Inc	201079552001064	Linn	Mound City	CenturyLink
Wisper ISP, Inc	201079552001079	Linn	Mound City	CenturyLink
Wisper ISP, Inc	201079552001082	Linn	Blue Mound	CenturyLink
Wisper ISP, Inc	201079552001140	Linn	Blue Mound	CenturyLink
Wisper ISP, Inc	201079552001149	Linn	Blue Mound	CenturyLink
Wisper ISP, Inc	201079552001157	Linn	Blue Mound	CenturyLink
Wisper ISP, Inc	201079552001202	Linn	Blue Mound	CenturyLink
Wisper ISP, Inc	201079552001212	Linn	Mapleton/Mound City	CenturyLink
Wisper ISP, Inc	201079552001219	Linn	Mound City	CenturyLink
Wisper ISP, Inc	201079552001228	Linn	Mound City	CenturyLink
Wisper ISP, Inc	201079552001232	Linn	Mapleton	CenturyLink
Wisper ISP, Inc	201079552002232	Linn	Mound City	CenturyLink
Wisper ISP, Inc	201079552002240	Linn	Mound City	CenturyLink
Wisper ISP, Inc	201079552002245	Linn	Mound City	CenturyLink
Wisper ISP, Inc	201079552005202	Linn	Mound City	CenturyLink
Wisper ISP, Inc	201079552005212	Linn	Mound City	CenturyLink
Wisper ISP, Inc	201079552005214	Linn	Mound City	CenturyLink
Wisper ISP, Inc	201211002002001	Miami	Spring Hill	CenturyLink
Wisper ISP, Inc	201211002002023	Miami	Spring Hill	CenturyLink
Wisper ISP, Inc	201211002002026	Miami	Spring Hill	CenturyLink
Wisper ISP, Inc	201211002002208	Miami	Bucyrus	CenturyLink
Wisper ISP, Inc	201211002002256	Miami	Bucyrus	CenturyLink
Wisper ISP, Inc	201211003001004	Miami	Drexel MO	Consolidated MO
Wisper ISP, Inc	201211004001122	Miami	Drexel MO	Consolidated MO
Wisper ISP, Inc	201211004001141	Miami	Drexel MO	Consolidated MO
Wisper ISP, Inc	201211005001160	Miami	Osawatomie	CenturyLink
Wisper ISP, Inc	201211005002062	Miami	Fontana	CenturyLink
Wisper ISP, Inc	201211005002127	Miami	Fontana	CenturyLink
Wisper ISP, Inc	201211007007059	Miami	Lane	CenturyLink
Wisper ISP, Inc	201211007007125	Miami	Lane	CenturyLink
Wisper ISP, Inc	201259507003009	Montgomery	Cherryvale	AT&T
Wisper ISP, Inc	201259507003010	Montgomery	Cherryvale	AT&T
Wisper ISP, Inc	201259507003016	Montgomery	Cherryvale	AT&T
Wisper ISP, Inc	201259507003019	Montgomery	Cherryvale	AT&T
Wisper ISP, Inc	201259507003037	Montgomery	Cherryvale	AT&T

BIDDER	CENSUS BLOCK	COUNTY	EXCHANGE	ILEC
Wisper ISP, Inc	201259507003041	Montgomery	Cherryvale	AT&T
Wisper ISP, Inc	201259507003047	Montgomery	Cherryvale	AT&T
Wisper ISP, Inc	201259507003049	Montgomery	Cherryvale	AT&T
Wisper ISP, Inc	201259507003050	Montgomery	Cherryvale	AT&T
Wisper ISP, Inc	201259507003134	Montgomery	Coffeyville	AT&T
Wisper ISP, Inc	201259507003160	Montgomery	Coffeyville	AT&T
Wisper ISP, Inc	201259507003188	Montgomery	Coffeyville	AT&T
Wisper ISP, Inc	201259507003190	Montgomery	Coffeyville	AT&T
Wisper ISP, Inc	201259507003197	Montgomery	Coffeyville	AT&T
Wisper ISP, Inc	201259507005113	Montgomery	Coffeyville	AT&T
Wisper ISP, Inc	201259508001048	Montgomery	Coffeyville	AT&T
Wisper ISP, Inc	201259508002029	Montgomery	Coffeyville	AT&T
Wisper ISP, Inc	201259508002076	Montgomery	Coffeyville	AT&T
Wisper ISP, Inc	201259508003006	Montgomery	Coffeyville	AT&T
Wisper ISP, Inc	201259509001041	Montgomery	Coffeyville	AT&T
Wisper ISP, Inc	201259509001066	Montgomery	Coffeyville	AT&T
Wisper ISP, Inc	201259509001071	Montgomery	Coffeyville	AT&T
Wisper ISP, Inc	201259509001074	Montgomery	Coffeyville	AT&T
Wisper ISP, Inc	201259509001075	Montgomery	Coffeyville	AT&T
Wisper ISP, Inc	201259509001102	Montgomery	Coffeyville	AT&T
Wisper ISP, Inc	201259509001104	Montgomery	Coffeyville	AT&T
Wisper ISP, Inc	201259509001111	Montgomery	Coffeyville	AT&T
Wisper ISP, Inc	201259509001112	Montgomery	Coffeyville	AT&T
Wisper ISP, Inc	201259509002000	Montgomery	Coffeyville	AT&T
Wisper ISP, Inc	201259509002132	Montgomery	Coffeyville	AT&T
Wisper ISP, Inc	201259511001003	Montgomery	Coffeyville	AT&T
Wisper ISP, Inc	201259511001014	Montgomery	Coffeyville	AT&T
Wisper ISP, Inc	201259511001030	Montgomery	Coffeyville	AT&T
Wisper ISP, Inc	201259512002044	Montgomery	Coffeyville	AT&T

CERTIFICATE OF SERVICE

19-WIIZ-225-ETC

, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of electronic service on 02/14/2019.

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/S/ DeeAnn Shupe

DeeAnn Shupe

ATTACHMENT G



Missouri Public Service Commission

APR 12 2019

Missouri Public
Service Commission

3:21 pm CT

Judge or Division:	Appellate Number: 82727
Appellant: Conexon, LLC and GoSEMO, LLC	Missouri Public Service Commission File Number: CA-2019-0196
vs.	
Respondent: Missouri Public Service Commission	

FILED

APR 17 2019

(Date File Stamp)
SUSAN C. SCHNEIDER, CLERK
WESTERN DISTRICT

Notice of Appeal

Notice is given that Conexon, LLC and GoSEMO, LLC appeals to the Missouri

Court of Appeals ☒ Western ☐ Eastern ☐ Southern District.

4/12/2019
Date Notice of Appeal Filed
(to be filled in by Secretary of Commission)

Megan E. Ray by [Signature]
Signature of Attorney or Appellant

The notice of appeal shall include the appellant's application for rehearing, a copy of the reconciliation required by subsection 4 of section 386.420, a concise statement of the issues being appealed, a full and complete list of the parties to the commission proceeding, and any other information specified by the rules of the court. The appellant(s) must file the original and (2) two copies and pay the docket fee required by court rule to the Secretary of the Commission within the time specified by law. **Please make checks or money orders payable to the Missouri Court of Appeals.** At the same time, Appellant must serve a copy of the Notice of Appeal on attorneys of record of all parties other than appellant(s), and on all parties not represented by an attorney. The commission shall forward the notice of appeal to the appropriate appellate court.

CASE INFORMATION

Appellant Name / Bar Number: Megan E. Ray 62037		Respondent's Attorney / Bar Number: Missouri Public Service Commission	
Address: 3816 South Greystone Ct., Suite B Springfield, MO 65804		Address: 200 Madison Street, Suite 800 PO Box 360 Jefferson City, MO 65102	
Telephone: 417-864-6401	Fax: 417-864-4967	Telephone: 573-751-3234	Fax:
Date of Commission Decision: 2/14/19	Date of Application for Rehearing Filed: 2/22/19	Date Application for Rehearing Ruled On: 3/13/19	

DIRECTIONS TO COMMISSION

A copy of the notice of appeal and the docket fee shall be forwarded to the clerk of the appellate court. Unless otherwise ordered by the court of appeals, the commission shall, within thirty days of the filing of the notice of appeal, certify its record in the case to the court of appeals.

Certificate of Service

I certify that on 4/12/19 (date), I served a copy of the notice of appeal on the following parties, at the following address(es), by the method of service indicated.
(See Attachments)

Megan E. Ray
Appellant or Attorney for Appellant

Certificate of Service

The undersigned certifies that a true and correct copy of the forgoing document was served by electronic mail or U.S. Mail, postage prepaid, this April 12, 2019 upon all counsel of record and the following:

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dgc@bglattorneys.com

/s/ Megan E. Ray

Megan E. Ray

Full and Complete List of Parties

In accordance with RSMo. 386.510, the following contains a full and complete list of the parties to the Commission proceeding:

Appellants/Complainants:

Conexon, LLC
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Respondent:

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Additional Parties to Commission Hearing

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Douglas C Gruenke
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dcg@bglatorneys.com

Concise Statement of Issues

In accordance with RSMo. 386.510, the following contains a concise statement of the issues being appealed:

Conexon, LLC and GoSEMO, LLC appeal the Missouri Public Service Commission's Order Granting Designation as an Eligible Telecommunications Carrier ("ETC") to Wisper ISP Inc. The Order was premature in that discovery by Intervenor was not permitted, depriving Intervenor of their due process rights. Additionally, Wisper's ETC Application contained material misrepresentations which were not corrected by the date of the Order and Wisper's ETC Application failed to comply with all the ETC requirements. Furthermore, Wisper's ETC application was incomplete. Finally, Wisper's ETC application failed to comply with Commission Rule 4 CSR 2.060(1)(M) and 4 CSR 240-31.016(2)(A).

No reconciliation pursuant to subsection 4 of Section 386.420 RSMo. is required in the instant matter, as the Commission's Order has not resulted in the establishment of new rates.